FOREWORD

The 1999 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the fourteenth in an annual series that surveys significant foreign barriers to U.S. exports.

In accordance with section 181 of the Trade Act of 1974 (the 1974 Trade Act), as amended by section 303 of the Trade and Tariff Act of 1984 (the 1984 Trade Act), section 1304 of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Trade Act), section 311 of the Uruguay Round Trade Agreements Act (1994 Trade Act), and section 1202 of the Internet Tax Freedom Act, the Office of the U.S. Trade Representative is required to submit to the President, the Senate Finance Committee, and appropriate committees in the House of Representatives, an annual report on significant foreign trade barriers.

The statute requires an inventory of the most important foreign barriers affecting U.S. exports of goods and services, foreign direct investment by U.S. persons, and protection of intellectual property rights. Such an inventory facilitates negotiations aimed at reducing or eliminating these barriers. The report also provides a valuable tool in enforcing U.S. trade laws, with the goal of expanding global trade, which benefits all nations.

The report provides, where feasible, quantitative estimates of the impact of these foreign practices on the value of U.S. exports. Information is also included on actions being taken to eliminate any act, policy, or practice identified in the report.

SCOPE AND COVERAGE

This report is based upon information compiled within USTR, the U.S. Departments of Commerce and Agriculture, and other U.S. Government agencies, and supplemented with information provided in response to a notice in the *Federal Register,* and by members of the private sector trade advisory committees and U.S. Embassies abroad.

Trade barriers elude fixed definitions, but may be broadly defined as government laws, regulations, policies, or practices that either protect domestic products from foreign competition or artificially stimulate exports of particular domestic products. This report classifies foreign trade barriers into ten different categories. These categories cover government-imposed measures and policies that restrict, prevent, or impede the international exchange of goods and services. They include:

- Import policies (e.g., tariffs and other import charges, quantitative restrictions, import licensing, customs barriers);

- Standards, testing, labeling and certification (including unnecessarily restrictive application of sanitary and phytosanitary standards and environmental measures, and refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards);

- Government procurement (e.g., "buy national" policies and closed bidding);

! Export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

! Lack of intellectual property protection (e.g., inadequate patent, copyright, and trademark regimes);

! Services barriers (e.g., limits on the range of financial services offered by foreign financial institutions,[1] regulation of international data flows, and restrictions on the use of foreign data processing);

! Investment barriers (e.g., limitations on foreign equity participation and on access to foreign government-funded research and development (R&D) programs, local content and export performance requirements, and restrictions on transferring earnings and capital);

! Anticompetitive practices with trade effects tolerated by foreign governments (including anticompetitive activities of both state-owned and private firms that apply to services or to goods and that restrict the sale of U.S. products to any firm, not just to foreign firms that perpetuate the practices);

! Trade restrictions affecting electronic commerce (e.g., tariff and nontariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); and

! Other barriers (barriers that encompass more than one category, e.g., bribery and corruption,[2] or that affect a single sector).

The NTE report covers significant barriers, whether they are consistent or inconsistent with international trading rules. Many barriers to U.S. exports are consistent with existing international trade agreements. Tariffs, for example, are an accepted method of protection under the General Agreement on Tariffs and Trade (GATT). Even a very high tariff does not violate international rules unless a country has made a "bound" commitment not to exceed a specified rate. On the other hand, where measures are not consistent with international rules, they are actionable under U.S. trade law and through the World Trade Organization (WTO).

This report discusses the largest export markets for the United States, including: 49 nations, the European Union, Taiwan, Hong Kong and two regional bodies. Some countries were excluded from this report due primarily to the relatively small size of their markets or the absence of major trade complaints from representatives of U.S. goods and services sectors. However, the omission of particular countries and barriers does not imply that they are not of concern to the United States.

In prior reports, most non-market economies also were excluded, since the trade barriers in those countries were qualitatively different from those found in other economies. However, as the economies of the republics of the former Soviet Union and most economies of the countries of Central Europe evolve away from central planning toward a market orientation, some of them have changed sufficiently to warrant an examination of their trade regimes. Where such examination has revealed trade barriers, those barriers have been included in this report.

Forward

The merchandise trade data contained in the NTE report are based on total U.S. exports, free alongside (f.a.s.)[3] value, and general U.S. imports, customs value (defined in Section 402, Tariff Act of 1930, 19 U.S.C. 1401a), as reported by the Bureau of the Census, Department of Commerce. (NOTE: These data are ranked according to size of export market in the Appendix.) The direct investment data are from the September 1998 issue of the Survey of Current Business and unpublished data from the Bureau of Economic Analysis, Department of Commerce.

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

Wherever possible, this report presents estimates of the impact on U.S. exports of specific foreign trade barriers or other trade distorting practices. However, it must be understood that these estimates are only approximations. Also, where consultations related to specific foreign practices were proceeding at the time this report was published, estimates were excluded, in order to avoid prejudice to those consultations.

The estimates included in this report constitute an attempt to assess quantitatively the potential effect of removing certain foreign trade barriers on particular U.S. exports. However, the estimates cannot be used to determine the total effect upon U.S. exports to either the country in which a barrier has been identified or to the world in general. In other words, the estimates contained in this report cannot be aggregated in order to derive a total estimate of gain in U.S. exports to a given country or the world.

Trade barriers or other trade distorting practices affect U.S. exports to another country because these measures effectively impose costs on such exports that are not imposed on goods produced domestically in the importing country. In theory, estimating the impact of a foreign trade measure upon U.S. exports of goods requires knowledge of the (extra) cost the measure imposes upon them, as well as knowledge of market conditions in the United States, in the country imposing the measure, and in third countries. In practice, such information often is not available.

Where sufficient data exist, an approximate impact of tariffs upon U.S. exports can be derived by obtaining estimates of supply and demand price elasticities in the importing country and in the United States. Typically, the U.S. share of imports is assumed to be constant. When no calculated price elasticities are available, reasonable postulated values are used. The resulting estimate of lost U.S. exports is approximate, depends upon the assumed elasticities, and does not necessarily reflect changes in trade patterns with third countries. Similar procedures are followed to estimate the impact upon our exports of subsidies that displace U.S. exports in third country markets.

The task of estimating the impact of nontariff measures on U.S. exports is far more difficult, since there is no readily available estimate of the additional cost these restrictions impose upon imports. Quantitative restrictions or import licenses limit (or discourage) imports and thus raise domestic prices, much as a tariff does. However, without detailed information on price differences between countries and on relevant supply and demand conditions, it is difficult to derive the estimated effects of these measures upon U.S. exports. Similarly, it is difficult to quantify the impact upon U.S. exports (or commerce) of other foreign practices such as government procurement policies, nontransparent standards, or inadequate intellectual property rights protection.

Forward

In some cases, particular U.S. exports are restricted by both foreign tariff and nontariff barriers. For the reasons stated above, it may be difficult to estimate the impact of such nontariff barriers on U.S. exports. When the value of actual U.S. exports is reduced to an unknown extent by one or more than one nontariff measure, it then becomes derivatively difficult to estimate the effect of even the overlapping tariff barriers on U.S. exports.

The same limitations that affect the ability to estimate the impact of foreign barriers upon U.S. goods exports apply to U.S. services exports. Furthermore, the trade data on services exports are extremely limited and of questionable reliability. For these reasons, estimates of the impact of foreign barriers on trade in services also are difficult to compute.

With respect to investment barriers, there are no accepted techniques for estimating the impact of such barriers on U.S. investment flows. For this reason, no such estimates are given in this report. The NTE report includes generic government regulations and practices which are not product-specific. These are among the most difficult types of foreign practices for which to estimate trade effects.

In the context of trade actions brought under U.S. law, estimations of the impact of foreign practices on U.S. commerce are substantially more feasible. Trade actions under U.S. law are generally product-specific and therefore more tractable for estimating trade effects. In addition, the process used when a specific trade action is brought will frequently make available non-U.S. Government data (U.S. company or foreign sources) otherwise not available in the preparation of a broad survey such as this report.

In some cases, industry valuations estimating the financial effects of barriers are contained in the report. The methods computing these valuations are sometimes uncertain. Hence, their inclusion in the NTE report should not be construed as a U.S. Government endorsement of the estimates they reflect.

March 31, 1999

Endnotes

1. The current NTE report covers only those financial services-related market access issues brought to the attention of USTR by outside sources. For the reader interested in a more comprehensive discussion of financial services barriers, the Treasury Department publishes quadrennially (most recently in 1998) the National Treatment Study. Prepared in collaboration with the Secretary of State, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Department of Commerce, the Study analyzes in detail treatment of U.S. commercial banks and securities firms in foreign markets. It is intended as an authoritative reference for assessing financial services regimes abroad.

2. Corruption takes many forms, and can affect trade in many different ways. In many countries, it affects customs practices and decisions on the award of government procurement contracts. If left unchecked, bribery and corruption can negate market access gained through trade negotiations, undermine the foundations of the international trading system, and frustrate broader reforms and economic stabilization programs. U.S. firms also report that demands for bribes or “facilitation fees” from foreign customs officials can be an every-day element of the customs importation process.

Forward

Information on specific problems associated with bribery and corruption is difficult to obtain, particularly since perpetrators go to great lengths to conceal their activities. Nevertheless, a consistent complaint from U.S. firms is that they have experienced situations that suggest corruption has played a role in the award of foreign contracts. This is particularly true in large infrastructure projects.

Since the United States enacted the Foreign Corrupt Practices Act (FCPA) in 1977, U.S. companies have been prohibited from bribing foreign public officials. The result has been that foreign firms in international business transactions have enjoyed a competitive advantage, particularly in the developing world.

The United States Government has been well aware of the discrepancy between U.S. law and that of its competitors, and has taken a leading role in addressing bribery and corruption in international business transactions with its trading partners at the Organization for Economic Cooperation and Development (OECD). With the strong urging of the United States, at the 1996 OECD Ministerial meeting, Ministers committed to take steps to eliminate the tax deductibility in their countries of bribes to foreign public officials, to criminalize bribery, and to examine methods to accomplish those objectives. In May 1997, OECD member countries agreed to criminalize bribery and complete negotiations on an international convention by the end of the year. This goal was achieved in November 1997, when negotiators from thirty-four countries (the twenty-nine OECD member states and five other nations (Argentina, Brazil, Bulgaria, Chile and the Slovak Republic)) adopted a Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Convention was signed by representatives of thirty-three participating countries on December 17, 1997 in Paris. By the end of 1998, Canada, Finland, Hungary, Iceland, Japan, Germany, the United Kingdom and the United States had ratified it. The Convention entered into force on February 15, 1999, on the basis of the requirement that five of the ten largest OECD members ratify the Convention in order for it to enter into force.

In March 1996, countries in the Western Hemisphere concluded negotiation of the Inter-American Convention Against Corruption. This Convention, a direct result of the Summit of the Americas Plan of Action, requires that parties criminalize bribery throughout the region, and describes criminalization using language modeled on the FCPA. The Convention entered into force in March 1997 for those countries which have ratified the Convention. The United States is taking steps towards ratification of the Convention. Meanwhile, the Organization of American States is working on a set of model laws that ratifying countries can use to implement the Convention.

To complement efforts in these fora, the United States has pressed the World Trade Organization (WTO) to take up work in related areas. Because corruption in trade transactions often has its genesis in the absence of a rules-based customs environment, the United States has provided leadership at the WTO in several areas to address some of the problems associated with bribery and corruption in the customs area. A Working Party has been working the past two years on developing several immediate actions to be undertaken by Members to strengthen the operation of the Agreement on Preshipment Inspection. The United States has also been leading an ongoing initiative to ensure full and timely implementation of the WTO Agreement on Customs Valuation. Finally, as part of the follow-up to the 1996 WTO Ministerial decision to undertake exploratory and analytical work on the simplification of trade and customs procedures, the United States has identified the matter of customs integrity as a priority item.

In addition, at the 1996 WTO Ministerial Conference in Singapore, the United States succeeded in securing agreement to initiate work on transparency in government procurement in the WTO. Accordingly, the WTO Working Group on Transparency in Government Procurement was established and held its first meetings in 1997. The Working Group has made significant progress on its mandate, which calls for conducting a study on transparency in government procurement and developing elements for inclusion in a multilateral agreement. The United States views a WTO agreement on transparency in government procurement as an important complement to its efforts to combat corruption relating to government procurement worldwide and believes that the agreement should address fundamental aspects of transparency, including:

- Publication of information regarding the regulatory framework for procurement, including relevant laws, regulations and administrative guidelines;

- Publication of information regarding opportunities for participation in government procurement, including notices of future procurements;

- Utilization of competitive procurement procedures;

- Clear specification in tender documents of evaluation criteria for award of contracts;

- Availability to suppliers of information regarding contracts that have been awarded; and

- Availability of mechanisms to challenge contract awards and other procurement decisions.

3. Free alongside (f.a.s.): Under this term, the seller quotes a price, including delivery of the goods alongside and within the reach of the loading tackle (hoist) of the vessel bound overseas.

THE ARAB LEAGUE

(Boycott of Israel)

The Arab League boycott of the state of Israel is an impediment to U.S. trade and investment in the Middle East and North Africa. Arab League members include the Palestinian Authority and the following states: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates (U.A.E.), and Yemen.

The primary aspect of the boycott prohibits the importation of Israeli-origin goods and services into boycotting countries while the secondary and tertiary aspects of the boycott discriminate against U.S. and other foreign firms that do business with both Israel and boycotting countries. The secondary and tertiary aspects of the boycott directly affect U.S. exports to the region. The secondary aspect prohibits any entity in Arab League states from engaging in business with U.S. or other foreign firms that contribute to Israel's military or economic development. Such firms are placed on a blacklist maintained by the Damascus-based Central Boycott Office (CBO), a specialized bureau of the Arab League. The tertiary aspect of the boycott prohibits business dealings with U.S. and other firms that do business with blacklisted companies.

The CBO uses a variety of means to determine compliance with the boycott, including analyzing information obtained through questionnaires sent out to third-country individuals and firms. If the CBO suspects that a firm has engaged in proscribed activities, it may recommend that the Israel Boycott Offices of the member states add the firm to the blacklist. Boycott offices of Arab League states are supposed to meet in Damascus twice a year to consider adding foreign firms to (or removing foreign firms from) the blacklist, but there has been no regional boycott meeting since April 1993, and some states have dismantled their boycott offices entirely. The reason given for postponement of meetings has been the inability to assemble a quorum.

While the legal structure of the boycott in the Arab League remains unchanged, its enforcement varies widely from country to country. Some member governments of the Arab League have consistently maintained that only the Arab League as a whole can revoke the boycott. Other member governments support national discretion on adherence to the boycott, and a number of states have taken steps to dismantle their adherence to some aspects of it.

More specifically, Egypt has not enforced any aspect of the boycott since 1980, pursuant to its 1979 Treaty of Peace with Israel. Jordan formally terminated its adherence to all aspects of the boycott effective August 16, 1995, when legislation implementing the Treaty of Peace with Israel was enacted. The Palestinian Authority agreed not to enforce the boycott in a 1995 letter to then-U.S. Trade Representative Kantor.

The Gulf Cooperation Council countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the U.A.E.) announced in September 1994 their non-adherence to the secondary and tertiary aspects (a decision which Kuwait had announced previously). Accordingly, requests that foreign firms comply with secondary and tertiary boycott certifications are typically withdrawn when challenged. Subsequently in 1996, both Oman and Qatar ended boycott enforcement and established reciprocal trade arrangements with Israel.

Other Arab League members that have stopped enforcing the boycott include: Mauritania, Morocco, and Tunisia which have recognized Israel through establishment of limited diplomatic relations; Yemen which formally renounced observance of the secondary and tertiary aspects of the boycott in 1995; and Lebanon and Algeria which still adhere in principle but not in practice to the boycott.

The boycott, however, remains a substantive impediment to doing business in countries which rigidly impose its terms. In this respect, Syria continues to be among the strictest adherents to the boycott. Although it allows goods to be imported with a positive (rather than a negative country of origin certificate), Syria strictly monitors and controls entry into its ports by ships which have made calls in Israel, and it often requires certifications of commercial activity in Israel by companies seeking to register trademarks or acquire import licenses.

Under U.S. antiboycott legislation enacted in 1978, U.S. firms are prohibited from providing any information about business relationships in response to a boycott request and are required to report receipt of any such request to the U.S. Department of Commerce's Office of Antiboycott Compliance. U.S. antiboycott laws also prohibit U.S. persons from taking certain other actions, including refusal to do business with a blacklisted company. Encouragingly, the number of boycott related requests to U.S. firms to take prohibited actions is significantly diminished across the region. In some states, apparent requests now reflect obsolete references in procurement or import documents rather than official policy. The fact that the de jure status of the boycott and U.S. law remain unchanged, however, make the boycott a continuing problem for firms that may have to report boycott-related requests.

Where enforced, the boycott serves as a ban or zero quota on the products of a blacklisted firm. While it is unevenly applied, the boycott results in significant economic harm to U.S. firms in terms of lost sales, foregone opportunities and distortion of investment decisions which are difficult to quantify accurately.

ARGENTINA

In 1998, the U.S. trade surplus with Argentina was $3.6 billion, an increase of $38 million from the 1997 surplus. U.S. merchandise exports to Argentina were $5.9 billion during 1998, an increase of $77 million from the level of U.S. exports to Argentina in 1997. Argentina was the United States' 23rd largest export market in 1998. U.S. imports from Argentina were $2.3 billion in 1998, up only slightly from 1997.

The stock of U.S. foreign direct investment (FDI) in Argentina in 1997 was $9.8 billion, an increase of 23 percent from the level of U.S. FDI in 1996. U.S. FDI in Argentina is concentrated largely in the manufacturing, finance, and petroleum sectors.

IMPORT POLICIES

Since 1989, the Menem administration has made significant progress in reducing tariffs and nontariff barriers, including in the areas of investment and government procurement. Still, a number of serious barriers to trade remain.

Tariffs and Duties

MERCOSUR

Argentina, Brazil, Paraguay and Uruguay officially inaugurated MERCOSUR (the Spanish abbreviation for Southern Common Market) in January 1991. On January 1, 1995, MERCOSUR designated itself as a customs union by establishing a common external tariff (CET) covering 85 percent of traded goods. MERCOSUR will gradually phase in coverage of the CET through 2006, when all products should be covered by the customs union. As of January 1, 1999, virtually all trade between Brazil and Argentina enjoys duty-free status under the intra-Mercosur duty phase out schedule. However, many sensitive sectors, such as sugar, autos and telecommunications equipment, are still assessed customs duties, falling on either Brazil or Argentina's exception list. Chile became an Associate Member of MERCOSUR on October 1, 1996, and Bolivia did the same on April 1, 1997. Neither country participates in the CET.

Prior to November 1997, MERCOSUR's CET ranged from 0 to 20 percent. Under the CET, capital goods and informatics are excepted until 2001, and telecommunications equipment until 2006. In November 1997, Mercosur's members agreed to temporarily raise the CET by three percentage points. Argentina implemented the increase in January 1998, effective through December 31, 1999. Argentina's average tariff currently is around 13.5 percent. Some imports are banned altogether, such as re-manufactured auto parts. Tariffs were significantly increased in January 1999 on toys, particularly those originating in countries that are not members of the WTO. The U.S. Government hopes to eliminate tariff barriers on a hemispheric basis through the Free Trade Area of the Americas (FTAA) negotiation.

Argentina has been negatively affected by recent economic turmoil in Brazil and the devaluation of the Real, particularly in the Argentine export sector. Approximately 31% of Argentina's exports go to Brazil. In early 1999, the Governments of Brazil and Argentina initiated discussions to find the best method for confronting the economic situation. The U.S. Government will take steps to help ensure that MERCOSUR countries do not turn their backs on trade liberalization in response to current difficulties.

Pre-shipment Inspection and Paperwork Requirements

In November 1997, the Government of Argentina put in place a pre-shipment inspection (PSI) regime, covering some 1,800 goods for shipments valued at more than $3,000. The U.S. industry's greatest complaint concerning this regime has been unwarranted delays in processing. In 1998, the Argentine Government expanded the product coverage of the PSI regime by over 1,800 tariff classifications and lowered the shipment order value to $800. In addition, Argentina created in January 1999 a procedure for import monitoring which will affect roughly one-fifth of its imports, principally textiles, toys and footwear, by requiring that an "information form" be filed prior to entry of the imports. This system appears to be similar to an import licensing regime. The U.S. Government is monitoring this system carefully to detect any impediment to trade.

Textiles, Apparel and Footwear

On October 4, 1996, USTR self-initiated an investigation under section 301 of the Trade Act of 1974 into Argentina's application of specific duties on textiles, apparel and footwear; three percent statistical tax on almost all imports; and burdensome labeling requirements.

The United States and Argentina consulted extensively in this matter, leading to Argentina's modification of its labeling requirement. To address the remaining issues, we requested the establishment of a WTO dispute settlement panel in January 1997. After this request was delayed by Argentina as allowed under WTO procedures, in February 1997 the WTO Dispute Settlement Body established a panel, at which time Argentina informed the WTO that it had revoked the specific duties on footwear and replaced them with nearly identical provisional safeguard duties. In September 1997, Argentina extended the application of the safeguard duties on footwear until February 2000.

In November 1997 the panel found in favor of the United States, stating that, per Article II, Argentina could not impose specific duties where it bound its tariffs exclusively in *ad valorem* terms. The panel also found that Argentina's three percent statistical tax on almost all imports violates GATT Article VIII. Argentina appealed the panel decision, but the WTO Appellate Body upheld the panel determination in March 1998. Regarding implementation of the panel determination, in October 1998 Argentina capped its duties on textiles and apparel at the bound rate of 35 percent. On the statistical tax, Argentina reduced the tax to .5 percent in January 1998 and will cap this statistical tax at appropriate levels beginning on May 30, 1999, per an Argentine Government decree published on February 25, 1999.

The panel had not opined on footwear, stating that it was unable to afford relief on measures no longer in effect. Believing that Argentina's application of the footwear safeguard raised serious questions regarding the WTO obligations of Argentina, the United States has raised the safeguard bilaterally at high levels on many occasions and has asserted third party rights in the EC panel on this matter. In November 1998, the Argentine Government modified the safeguard through Resolution 1506. The resolution establishes a quantitative restriction in addition to the already-high safeguard duty, while imposing a TRQ of 3.9 million pairs on imports of footwear falling under the original safeguard measure (all imports not originating in MERCOSUR). This quota amount represents less than 50% of annual footwear imports from non-Mercosur countries over the last

3 years. Non-Mercosur footwear imports below the quota limit are subject to the original safeguard duty according to their HTS classification. Once the quota limit is filled for each HTS number, imports above the limit are assessed a duty rate that is double the current safeguard duty. In addition, the Resolution postpones any liberalization of the original safeguard duty until November 30, 1999, delaying two tariff reductions that were scheduled for December 1998 and August 1999. A scheduled May 1998 liberalization had already been delayed in April 1998. As regards liberalization of the quota, on December 1, 1999 the quota will be marginally liberalized by a 10% increase.

In the December 1998 Third Party Submission of the United States in the EC's WTO panel on the original footwear safeguard (final report due in May 1999), we expressed our view that the modification of the safeguard appears to be in violation of article 7.4 of the Safeguard Agreement The modification of the safeguard raises even greater concerns, specifically in light of the requirements of Article 7.4 of the WTO Agreement on Safeguards. We are currently considering our policy options in this case, including the pursuit of litigation at the WTO. In March 1999, the U.S. Government requested WTO consultations with Argentina on this matter.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In October 1995, Argentina placed a ban on the imports of California fresh fruits due to the detections of oriental fruit fly in the state. The U.S. Department of Agriculture (USDA) has provided Argentina's quarantine agency data and technical information on the situation. Argentina removed its ban on fruit from several California counties in 1996, and granted access in 1997 for citrus grown in these approved counties in 1997; however, Argentina continues to quarantine certain coastal counties. In 1997, Argentina imposed a mandatory fumigation on all stonefruits from the approved counties due to concern over the walnut husk fly, which is not present in Argentina. However, there is no credible evidence that stonefruits are a ready host for this pest. USDA continues to press Argentina to completely revoke these bans.

In addition, certain U.S. fruits, such as citrus from Florida, are currently denied access to Argentina. Florida exports of citrus to Argentina are currently banned due to phytosanitary concerns regarding the Mediterranean fruit fly and citrus canker. The United States. has been actively engaged with Argentina to resolve this issue, and we have been hopeful that the recent site visits and technical information provided by USDA to Argentine officials would allay Argentine pest concerns related to Florida citrus so that exports could commence. The U.S. citrus industry estimates its annual losses at $35 million due to Argentine restrictions.

In 1998, Argentina announced its intent to allow U.S. pork and pork products into Argentina. However, the required certification for trichanae, which is unnecessarily restrictive, effectively prevents U.S. pork from being shipped. The U.S. Department of Agriculture has proposed alternative language that should meet the needs of the Argentines, and is working with USTR to obtain a positive response. The U.S. pork industry believes that Argentine market is expected to be about $10 million.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Patents

Argentina's lack of adequate and effective patent protection, particularly for pharmaceutical products, has been a long-standing irritant in the bilateral trade relationship. Many of the TRIPS-inconsistencies in the Argentine patent law are not immediately actionable in the WTO, because Argentina has availed itself of the developing country transition period. Most of Argentina's TRIPs obligations come into force on January 1, 2000. However, Argentina's failure to comply fully with its current TRIPs obligation regarding Exclusive Marketing Rights for qualifying pharmaceutical products is cause for serious concern. The U.S. Government is considering appropriate policy responses to this apparent violation of WTO obligations.

In March 1996, Executive Decree 260, which consolidated previous patent laws, authorized the National Intellectual Property Institute (INPI) to approve pharmaceutical patents starting in November 2000, specifically permitted parallel imports and contained ambiguous provisions on compulsory licenses. In December 1996, the Argentine Congress passed unsatisfactory legislation dealing with data exclusivity, and the implementing regulations are still under consideration by the Government of Argentina. This law permits Argentine competitors to rely on data submitted for product registration in Argentina, the United States and certain other countries. As a result of the law, in August 1998 the Government of Argentina eliminated protection that it had previously accorded data used in the registration of agrochemical products.

The U.S. industry estimates that Argentina's lack of pharmaceutical patent protection results in losses of over $600 million a year. In January 1997, during a Special 301 out-of-cycle review (OCR), the U.S. Government announced the suspension of 50 percent of Argentina's GSP benefits effective in May 1997 due to Argentina's lack of patent protection for pharmaceuticals. In the 1998 Special 301 review, Argentina remained on the Priority Watch List (PWL) due primarily to the patent issue. U.S. officials continue to press Argentina to improve its patent and data exclusivity regimes.

Copyrights

Argentina's copyright laws are currently under review by the Government of Argentina, which has indicated its intention to ensure that its copyright regime meets TRIPs standards by January 1, 2000. Also, Argentina has made progress toward adopting legislation to ratify the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty. Regarding software, the Argentine Government promulgated legislation in November 1998 specifically criminalizing acts of software piracy, eliminating problems generated by previous Argentine court rulings.

Enforcement of copyrights generally remains an issue, and the U.S. copyright industry estimates annual losses due to copyright infringement at well over $250 million. The lack of border controls, particularly at the Paraguayan border, contributes to the regional circulation of pirated goods.

Trademarks

U.S. companies report that they continue to experience problems with enforcement of their trademarks. Enforcement efforts are adversely affected by the inability to seek criminal prosecution, monetary damages and criminal sanctions against counterfeiters.

SERVICES BARRIERS

In the 1990's, Argentina has undertaken services liberalization as part of its broader economic reform program, but some barriers continue to exist. In May 1996, the Argentine Government issued a regulation requiring local generation of a majority of cable channels carried by cable/pay television operators in Argentina. The regulation also obliges all operators to register their programming with a government body. In addition, high taxation and restrictions regarding the showing, printing and dubbing of films have burdened U.S. exports.

Entry into the insurance sector was liberalized in early 1992, allowing foreign firms established as local companies to compete fairly with Argentine insurers. However, foreign firms must have a subsidiary in Argentina to sell insurance locally. Since 1993, foreign companies were allowed to purchase existing insurance licenses from Argentine companies and to establish new companies with these acquired licenses. On October 1, 1998, however, the Government of Argentina eliminated this requirement, thereby allowing foreign companies to set up new companies without first acquiring an existing firm. Argentina reportedly levies an excise tax on reinsurance premiums ceded abroad. The tax is defined as a percentage of the gross reinsurance premium and is equal to the Argentine corporate tax rate multiplied by what Argentine law deems to be profit on reinsurance business, equal to 10 percent of gross premiums. This results in an excise tax withheld at 3.5 percent of gross premiums. Profit margins for insurance companies in Argentina appear to be well below 10 percent of gross premiums, according to U.S. companies.

In the WTO negotiations on telecommunications services, Argentina made commitments on most basic telecom services and adopted the reference paper on regulatory commitments. Argentina ratified the Fourth Protocol to the General Agreement on Trade in Services on July 27, 1998. While Argentina will open basic telecom services to limited competition in November 1999, it will continue to limit full market access for local, domestic and international long distance, cellular and other wireless services until November 2000.

INVESTMENT BARRIERS

Argentina has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The measures deal with local content and trade balancing in the automotive industry. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period. Argentina therefore must eliminate these measures before January 1, 2000, and Argentina is currently engaged in negotiations with its MERCOSUR partners to develop a common MERCOSUR auto regime by that date. The United States is working in the WTO Committee on TRIMs to ensure that all WTO members meet these obligations.

ELECTRONIC COMMERCE

Argentina

While Argentina has made no specific GATS commitments that would cover Internet access, the Government of Argentina generally supports the promotion of electronic commerce. The Argentines have taken steps to lower the cost of Internet usage and have shown interest in the U.S. electronic commerce initiatives in the FTAA and at the WTO. Despite its support for electronic commerce, however, the Government of Argentina has not participated in either of the Information Technology Agreements. In addition, Argentina does not allow the use of electronically produced air waybills, slowing the customs processing of critical “just-in-time” shipments and interfering with Argentina’s ability to conduct e-commerce transactions.

A December 1998 modification to the Argentine customs code, categorizing services and intellectual property as “goods” for customs purposes, raised U.S. concerns in this area. However, high-level Argentine officials have assured the U.S. Government of the their “firm decision” not to use the customs code reform to establish duties on the importation of services, intellectual property or electronic commerce transmissions.

AUSTRALIA

The U.S. trade surplus with Australia was $6.5 billion in 1998, $892 million lower than in 1997. U.S. merchandise exports to Australia were $11.9 billion, down $111 million (almost 1.0 percent) from 1997. Australia was the United States 15th largest export market in 1998. U.S. imports from Australia totaled $5.4 billion in 1998, a 17 percent increase over 1997. The stock of U.S. foreign direct investment in Australia was $26.1 billion in 1997, 8.0 percent lower than in 1996. U.S. direct investment in Australia is largely concentrated in manufacturing and finance.

IMPORT POLICIES

Tariffs

In the Uruguay Round, Australia did not join most other OECD countries in agreeing to phase out tariffs on paper and plasterboard products. Nor did it adhere to the "zero for zero" agreement for distilled spirits (Australia is the third largest market for U.S. exports of distilled spirits).

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and phytosanitary controls

The Government of Australia limits agricultural imports through quarantine and health restrictions, in some cases without the necessary risk assessment to provide the WTO-required scientific basis for such restrictions. As the result of an independent review of its animal and plant quarantine policies, Australia has implemented a formalized process for conducting import risk assessments. The new process provides for extensive industry consultations and appeals, potentially extending any review over several years. The U.S. is concerned that many commodities that have been discussed previously would have to start the review process all over again under the new rules.

The WTO found Australia's prohibition on the importation of all fresh, chilled, and frozen salmon (based on alleged health-related concerns) to be inconsistent with Australia's obligations under the WTO. On February 22, 1999, the WTO ruled that Australia had 8 months (i.e., July 6, 1999) to bring its regime into conformance with its WTO obligations (i.e., open its market).

Australia prohibits poultry imports (with the exception of cooked poultry) without completing the required WTO risk assessments. However, the Australian Quarantine and Inspection Service (AQIS) has recently started the process of undertaking an import risk analysis of uncooked chicken meat. A ruling is not expected until 2000. The Australian Government has lifted the ban on cooked chicken imports from the United States, Denmark and Thailand. The United States believes the recommended temperature/time requirements applicable to the treatment of processed cooked poultry meat are so extreme as to discourage imports. The United States remains concerned about the scientific basis of the 1997 risk assessment on cooked chicken meat conducted by the Australian Government. A WTO-inconsistent ban also exists on cooked pork (except canned products). The United States has raised these issues at the highest levels of the Australian Government and will continue to do so at all levels and in all appropriate fora.

Prior to 1994, imported feed grains were restricted from entering Australia, ostensibly due to phytosanitary concerns. During the 1994-95 drought the U.S. obtained approval to export feed grains to Australia to supplement domestic production. Since then, the requirement that all feed grains be steam-treated or processed in an alternative satisfactory manner at the port of entry has made further importation commercially unviable. Australia permits the importation of specified feed grains for processing in metropolitan areas under strict quarantine conditions, although facilities are currently available only at the Port of Brisbane. An import risk assessment on maize is currently underway.

Phytosanitary regulations also prohibit or severely limit the entry of many fruits from the United States, including Florida citrus, grapes, blueberries, stone fruit, apples and pears. After receiving U.S. cherries from California in 1996, the Australian Government decided to revisit the pest risk analysis because of the level of cherries which had to be treated upon arrival. U.S. cherries from 13 counties in California were again accepted in 1998. The United States is waiting for Australia's risk assessments on stone fruit and citrus. A U.S. industry estimate of the market opportunities which could arise from Australia's removal of its restrictions on fresh fruit is $100-$250 million. Industry marketers of Florida citrus estimate that export sales of Florida citrus would exceed $3 million.

Regulations Regarding Genetically Modified Organisms ("GMOs")

A new mandatory standard for foods produced using biotechnology comes into effect May 13, 1999. The standard prohibits the sale of food produced using gene technology, unless the food has been assessed by the Australia New Zealand Food Authority (ANZFA) and listed in the standard. In December 1998, the Australia New Zealand Food Standards Council directed ANZFA to require labeling for virtually all foods produced using biotechnology. Draft labeling regulations will be considered in mid-1999.

USTR will be monitoring both of these programs to determine whether they are being implemented in a manner that constitutes a barrier to trade.

GOVERNMENT PROCUREMENT

The United States continues to urge Australia to join and adhere to the WTO agreement on government procurement. We trust that Australia will join multilateral efforts to achieve a transparency agreement in the WTO.

EXPORT SUBSIDIES

Australia maintains several programs intended to enhance Australian exports. These include the following:

- Export Market Development Grants (EMDG): This scheme aims to encourage Australian exporters to seek out and develop overseas markets for goods, services, tourism, industrial property rights and technology that is substantially of Australian origin. EMDG scheme grants are provided partially to reimburse Australian residents who have incurred eligible expenditures while developing overseas markets for Australian products and services. Funding for the EMDG scheme was recently extended to the 2001-02 fiscal year.

- Export Facilitation Scheme: Under the terms of the EFS, manufacturers of automotive vehicles and components receive subsidies based on the level of exports of specified automotive products. The subsidies are in the form of duty rebate "credits" which recipients can, in turn, use to offset their duty liability on imports of specified automotive products. In general, the level of subsidy is determined based on the sales value of the eligible exports, but the calculation is also done in a way which rewards domestic value-added. The greater the value of any qualifying exported product, the greater the import credit granted. Significantly, however, there is no requirement that the imported products be physically incorporated into the exported product. Imports of finished vehicles for consumption on the Australian market are fully eligible for duty rebates under this scheme. The subsidy benefits are freely transferable and may be sold among participants in the program. It is true that the benefits are progressively reduced each year in line with the annual 2.5 percent tariff reduction on passenger motor vehicles. Nonetheless, the level of benefits will remain significant in the year 2000, when Australia's duty on imported vehicles and components will be 15 percent. The EFS is scheduled to terminate on December 31, 2000.

  On April 22, 1998, the Australian Government announced its new *5-year Automotive Competitiveness and Investment Scheme* (ACIS). The ACIS is scheduled to begin on January 1,2001. Like its EFS predecessor, the ACIS benefits will be in the form of transferrable import duty credits. In contrast to the EFS, the ACIS makes no overt export contingency references. The U.S. Government will pay careful attention to the Australian Government's eventual implementation of this program.

  As described by the Australian Government, the ACIS will reward (1) passenger motor vehicle manufacturers for performance in production and investment in new productive capital assets; and (2) component manufacturers and service providers for investment in new productive capital assets and in technology development. The value of assistance offered to an individual firm under the ACIS will be limited to 5 percent of its sales of eligible products or services produced in Australia in the previous year.

- Textiles, clothing and footwear (TCF) import credit scheme: Similar to the automotive export facilitation scheme, the TCF import credit scheme grants duty rebate credits to Australian exporters of TCF products. These import credits entitle the participating TCF exporters to a reduction in import duties on eligible TCF imports. The value of import credits granted is calculated as a percentage (currently 20 percent, falling to 15 percent in July 1999) of the domestic value-added in TCF exports. Import credits are freely transferable and may be sold among participants in the program. The scheme is scheduled to terminate on June 30, 2000.

  On July 10, 1998, the Australian Government announced its post 2000 TCF initiatives. The program will begin on July 1, 2000 and run for five years ending June 30, 2005. For Australian-based firms, the program will provide a rebate of up to 20 percent of eligible investment expenditure, reimbursement of up to 45 percent of expenditure on eligible innovation-related activities, and payment of up to 5 percent of TCF value-added by firms in Australia. All firms engaged in textiles, clothing, footwear and leather manufacturing in Australia will be eligible to apply.

- Automotive Leather: The Australian Government has provided its leading automobile leather exporter a grant worth up to A$30 million and a$25 million, 15-year, preferential loan with a five-year repayment holiday. The United States has initiated WTO dispute settlement proceedings with regard to this package.

LACK OF INTELLECTUAL PROPERTY PROTECTION

In general, Australia provides sound intellectual property protection, including for copyrights, patents, trademarks, designs and integrated circuits, and plant breeders' rights. However, the United States is seriously concerned with the recent Australian minimalist approach toward intellectual property protection. We have made these concerns known to the Australian Government on several occasions.

Only in April 1998 did Australia begin a regime to protect test data submitted to regulatory authorities for marketing approval of pharmaceuticals. This regime is a minimalist one, providing protection only for five years and only for new chemical compounds. No protection is provided for new uses and new formulations for existing compounds. Legislation to provide the same level of protection for agricultural chemicals and veterinary medicines is pending.

Consonant with this minimalist approach to intellectual property, the Australian Government has not updated its laws to impose stiffer fines on pirated goods. U.S. industry has seen measurable losses as a result.

In 1998 Australia passed legislation to allow parallel importation of sound recordings. The Government of Australia is also considering the removal of parallel import protection for additional copyrighted works including software, electronic games and gaming equipment.

Steadily growing parallel importation of DVDs is of increasing concern to the motion picture industry. In addition, U.S. industry advises that annual losses to the U.S. motion picture industry due to audiovisual piracy in Australia were about $21 million in 1998.

The Australian Copyright Act, its interpretation by Australian courts in certain instances, and the position taken by the Australian Federal Police not to pursue criminal prosecution where civil remedies are available, have created costly and burdensome obstacles to the enforcement of intellectual property rights against piracy. The civil remedies, however, have not proven an effective deterrent to piracy.

The Australian Government has announced that it will introduce legislation to allow decompilation under certain circumstances (which have not yet been spelled out). The U.S. Government continues to advise the Australians of our ongoing serious concerns with decompilation.

SERVICES BARRIERS

Australia is overdue in providing to the World Trade Organization an acceptance of the Fifth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on financial services into effect..

INVESTMENT BARRIERS

All potential foreign investors in Australia are required to submit to a screening process for investment approval. Application of Australia's foreign investment law provides discretion for the government to deny specific foreign investment based on "national interest". Australia's commitments under the GATS Agreement of the WTO are limited as a result of Australia's screening program.

The Australian telecommunications sector has been the subject of significant liberalization since 1997, when restrictions on the number of licensed carriers were lifted. However, total foreign investment in the November 1997 one-third privatization of the state-owned telecommunications carrier Telstra was limited to 35%, and the Australian Government has indicated that foreign investment will be restricted in any further sale.

OTHER BARRIERS

Commodity Boards

Several national and state commodity boards control the marketing and export of certain Australian agricultural products. Activities for these marketing authorities are financed by the producers, but some boards enjoy export monopoly powers conferred by the federal or state government. While some of the boards' domestic activities have been deregulated, the export of wheat and rice remains under the exclusive control of commodity boards. The Australian Government has indicated that the Australian Wheat Board (which strictly regulates wheat marketing abroad) will retain its export monopoly until at least 1999. The export of barley and raw sugar from certain states likewise remains strictly regulated, although the arrangements applicable to barley are currently under review. Approximately 95 percent of dairy exports are made by the private sector and about 5 percent by an arm of the Australian Dairy Corporation. Australia terminated its export support payment scheme for dairy producers on June 30, 1995, but instituted a new internal support program on July 1, 1995. The United States continues to monitor closely this new program for compliance with Australia's Uruguay Round commitments.

BRAZIL

In 1998, the U.S. trade surplus with Brazil was just over $5 billion, compared to $6.3 billion in 1997. U.S. merchandise exports to Brazil in 1998 were $15.2 billion, down $755 million from 1997. Nevertheless, Brazil again was the United States' 11th largest export market in 1998. U.S. imports from Brazil were $10.1 billion in 1998, an increase of $500 million from 1997.

The stock of U.S. foreign direct investment (FDI) in Brazil in 1997 was approximately $36 billion, an increase of 24 percent from the level of U.S. FDI in 1996 and double the 1994 FDI stock. U.S. FDI in Brazil is concentrated largely in the manufacturing and finance sectors. Investment in the power and telecommunications industries has risen rapidly in recent years due to the country's ongoing privatization program.

Overview

The economic liberalization initiated in 1990 and accelerated with the Real Plan in 1994 has produced significant changes in Brazil's trade regime, resulting in a more open and competitive economy. Imports increased as a result of these policies, as well as the strength of the Brazilian currency relative to the dollar during the 1994-98 period. The Brazilian Government imposed some restrictive measures, in part to slow mounting trade deficits, between 1996-1998. Nevertheless, most markets are characterized by competition and participation by foreign firms through imports, local production and joint ventures. The devaluation of the Real and the subsequent move to a floating exchange rate regime in early 1999 will certainly impact Brazilian trade flows.

Although the Brazilian Government has initiated large-scale programs to privatize its parastatals, it still dominates certain sectors of the economy, such as the petroleum and electrical energy sectors, thereby limiting trade, investment and procurement opportunities. However, the federal government has opened cellular telephone service to private investors and foreign firms and privatized remaining phone services with the July 1998 auction of the national monopoly provider Telebras. The Sao Paulo metropolitan area sold its "Band B" cellular concession to a U.S. company in 1997 and additional auctions have been completed since then. In early 1999, the Brazilian Government was preparing to auction operating rights for so-called "mirror" telephone operations across the country. Several Brazilian states have worked with the National Development Bank to develop privatization plans for state-controlled electric companies. Five of these companies were sold in 1997 and several more in 1998. Brazilian Government officials have indicated an interest in expanding sales of government-owned firms in the financial and the electricity sectors during 1999.

IMPORT POLICIES

Tariffs

While this is changing, tariffs historically have been the primary instrument in Brazil for regulating imports. In 1998 the average tariff under the common external tariff (CET) was 17 percent. This is a three percentage point increase from 1997, due to MERCOSUL's decision in November 1997 to raise the CET by this amount. Brazil currently maintains no applied tariff rates in excess of 35 percent, but does have safeguard measures in place for some imports such as toys. Some imports are banned altogether, such as re-manufactured auto parts.

Brazil and its MERCOSUL partners, Argentina, Paraguay and Uruguay, implemented the MERCOSUL CET on January 1, 1995. The CET currently covers approximately 85 percent of 9,000 tariff items. Most of the remaining 15 percent will be covered by 2001, and all will be covered by 2006. Exceptions to the CET include telecommunications equipment, computers, some capital goods and products included on Brazil's national list of exceptions to the CET, such as footwear, powdered milk, wine and consumer electronics. In November 1997, after consulting with its MERCOSUL neighbors, Brazil implemented the aforementioned three-percentage point increase on all tariff items (inside and outside the CET), raising the CET ceiling from 20 to 23 percent. Energy inputs such as coal and petroleum and agricultural inputs such as seeds were exempted. The tariff increases also affected capital goods, which constitute approximately 40 percent of U.S. exports to Brazil, exempting only capital goods not available domestically and reducing tariffs as high as 20 percent on these items down to 5 percent.

On January 1, 1999, Argentina and Brazil took further steps towards intra-MERCOSUL's free trade by reducing tariffs on a final list of 224 Argentine products and 32 Brazilian products to zero. Therefore, with the exception of sugar and autos, trade between Brazil and Argentina is now free. However, the Governments of Brazil and Argentina have been engaged in discussions on how best to handle the bilateral trade impact of the devaluation of the Real, and a number of policy options are under consideration. The U.S. Government is closely following these discussions to ensure that the implementation of such policy options does not prejudice U.S. interests and is fully consistent with both countries' WTO obligations.

Import Licensing/Customs Valuation

In January 1997, the Secretariat of Foreign Trade implemented a computerized trade documentation system (SISCOMEX) to handle import licensing. As of January 1, 1999, SISCOMEX charged a fee of R$30 per import statement and R$10 per product added to the statement. An increasing number of products no longer qualify for automatic licensing. In addition, beginning in October 1998, Brazil issued a series of administrative measures that required additional sanitary/phytosanitary (SPS), quality and safety approvals from various government entities for products subject to non-automatic licences. In December 1997, the government had already reduced the list of products receiving automatic licenses by over 300 products and required various ministry approvals prior to import. The October measures and the use of minimum price lists have been characterized by Brazil as a "deepening" of the existing import licensing regime and ostensibly as part of a larger strategy to prevent under-invoicing. However, the use of minimum price lists raises questions about whether Brazil's regime is consistent with its obligations under the WTO Agreement on Customs Valuation, and these practices have proven to be a barrier to U.S. exports.

While importers have needed to register with the Foreign Trade Secretariat (SECEX) since 1995, they now must follow new registration guidelines that are far more onerous than in the past, including a minimum capital requirement. Product registrations are also now required for imported food products and food supplement products, and the period of validity for these registrations has been reduced. In addition, the processing fees for these products has increased exponentially, and further increases are under consideration. Implementation of all of these measures continues to be poorly coordinated and less than transparent, magnifying their negative impact on U.S. exports.

Import Financing

Since April 1, 1997, Brazil has imposed requirements which appear to effectively eliminate supplier credit of less than 180 days for imports originating in countries that are not members of MERCOSUL, while providing substantial disincentives for supplying credit terms of one year or less. In February 1999, the Government of Brazil extended the MERCOSUL exception for this measure until June 30, 1999, and doubled the maximum value of MERCOSUL shipments exempt from the regulation to $80,000. The U.S. Government has raised its concerns bilaterally with the Brazilian Government regarding the WTO-consistency of this policy and joined as a third party observer in the March 1998 WTO dispute settlement consultation between the European Union and Brazil on this issue. The Government of Brazil is reportedly considering repealing this measure.

STANDARDS, TESTING, LABELING AND CERTIFICATION

While progress has been made in the area of SPS measures, as illustrated by Brazil's authorization of hard red winter wheat imports from the United States in 1998, they remain significant barriers in many cases. The United States has evidence that other types of wheat do not pose a risk to Brazil and will continue to work to resolve outstanding issues to obtain market access for all U.S. wheat. In addition, Brazil prohibits the entry of poultry and poultry products from the United States, alleging lack of reciprocity. The issue, however, is not reciprocity, rather, the fulfilment of WTO obligations regarding sanitary and phytosanitary decisions, which dictate that such determinations shall be based only upon sufficient scientific evidence. Brazil also bans the importation of beef products containing growth hormones and live ostriches from the United States. The ostrich ban is due to the alleged isolation of viscerotropic velogenic disease (VVND) from a dead bird that was part of a 1997 shipment of birds from the United States. However, the United States is recognized by the International Office of Epizootics (OIE - the international standard-setting body for veterinary issues) as being free of VVND. The U.S. and the Brazilian Governments have discussed establishing a Consultative Committee on Agriculture (CCA) to provide a bilateral mechanism for addressing SPS issues. Brazil maintains the harmonized phytosanitary standards of the Southern Cone Phytosanitary Committee (COSAVE), composed of Brazil, Argentina, Uruguay, Paraguay and Chile.

GOVERNMENT PROCUREMENT

Brazil is not a signatory to the GATT Agreement on Government Procurement. Brazilian federal, state and municipal governments, as well as related agencies and companies, follow a "buy national" policy, which provides preferential treatment in government procurement decisions to companies with production facilities in Brazil. However, Brazil permits foreign companies to compete in any procurement-related multilateral development bank loans and opens selected procurement to international tenders. Discriminatory government procurement practices have been particularly harmful to U.S. interests in the computer hardware and software sectors. To the extent that the privatization program in Brazil continues and non-discriminatory policies are adopted, U.S. firms will have greater opportunities in Brazil. To illustrate, in 1998 when the Government of Brazil reviewed fiber optic products solely on their merits, U.S. fiber optic cable was certified for sale in Brazil.

Law 8666 of 1993, covering most government procurement other than informatics and telecommunications, requires non-discriminatory treatment for all bidders, regardless of the nationality or origin of product or service. However, the law's implementing regulations allow consideration of non-price factors, give preferences to certain goods produced in Brazil and stipulate local content requirements for eligibility for fiscal benefits. Decree 1070 of March 1994, which regulates the procurement of informatics and telecommunications goods and services, requires federal agencies and parastatal entities to give preference to locally-produced computer products based on a complicated and non-transparent price/technology matrix.

EXPORT SUBSIDIES

The Government of Brazil offers a variety of tax and tariff incentives to encourage production for export and the use of Brazilian inputs in exported products. Several of these programs have been found to be countervailable under U.S. law in the context of specific countervailing duty cases. Incentives include tax and tariff exemptions for equipment and materials imported for the production of goods for export, excise and sales tax exemptions on exported products and rebates on materials used in the manufacture of exported products. Exporters enjoy exemption from withholding tax for remittances overseas for loan payments and marketing, as well as from the financial operations tax for deposit receipts on export products. Exporters are also eligible for a rebate on social contribution taxes paid on locally-acquired production inputs. The Government of Brazil has proposed tax reform, which would alter the value-added tax, thus modifying some of these incentives. In addition, Brazil is under extreme pressure from Argentina to remove these subsidies for exports destined for MERCOSUL, in light of the Real devaluation.

An export credit program known as PROEX was established in 1991. PROEX is intended to equalize domestic and international interest rates for export financing and to directly finance production of tradeable goods. Revisions to PROEX were announced most recently in 1998. The revisions expanded the size of the program and authorized coverage of additional export sectors. In 1998, $1.4 billion was budgeted for PROEX, with $903 million slated for equalization and $500 million for direct financing. However, only $616 million was actually spent last year on equalization, while $210 million went to financing. Historically, PROEX never used more than 30 percent of its allocated budget, but in 1998 utilized over 50 percent of its allocated resources for the first time. The Government of Brazil is reportedly considering a modification of this program, which has been under review in Geneva.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Brazil

Patents and Trademarks

Brazil’s industrial property law took effect in May 1997. The law improves most aspects of Brazil's industrial property regime, providing patent protection for pharmaceutical products and processes, agrochemical products and other inventions. However, some problems remain, such as the TRIPS-inconsistent provision that prohibits importation as a means of satisfying the requirement that the patent be “worked” in that country. The Government of Brazil reportedly is planning to submit a bill to the Congress in early 1999 that would bring the data confidentiality provisions of the industrial property law in line with TRIPs.

"Pipeline" protection is provided for inventions not previously patentable in Brazil because of limitations on patentable subject matter (e.g., pharmaceutical and agrochemical products) if these inventions were patented in another country and not marketed in Brazil. While Brazil's patent office, the National Institute for Industrial Property (INPI), has attempted to address its enormous backlog of both pipeline and regular patent applications, the resources and support necessary to effectively and consistently manage patent processing have been lacking. The Brazilian Government, however, has begun to computerize the patent and trademark offices.

The new industrial property law also added provisions for the protection of "well-known" trademarks, but contains a long list of categories of marks that are not registrable. The U.S. industry has expressed concern with the continued high level of counterfeiting in Brazil.

A law on protection of layout designs of integrated circuits, introduced in April 1996, has not been enacted. The Government of Brazil reportedly intends to submit new legislation on integrated circuits in order to meet Brazil’s TRIPs obligations in a timely manner.

Copyrights

A copyright bill that included amendments to bring Brazil into compliance with the Berne Convention and TRIPs was signed by President Cardoso in February 1998. A software law was signed by President Cardoso that same month, thus protecting computer programs as “literary works,” increasing the term of protection to 50 years, and making software infringement a fiscal, as well as an intellectual property, crime.

Copyright enforcement in Brazil is uneven. The U.S. industry reports that its annual losses from copyright piracy in Brazil are over $821 million, the largest amount of losses due to copyright piracy in the hemisphere. Problems have been particularly acute with respect to sound recordings and video cassettes, and virtually all audio cassettes sold are pirated copies. Brazil accounts for over half of the sales market for sound recordings in Latin America. Vigorous industry anti-piracy campaigns have had a positive impact. However, 1998 resulted in many prosecutions but few convictions of intellectual property rights violators. While the number of judicial anti-piracy actions, seizures of CD’s and indictments were all up in 1998 over the previous year, the sound recording industry estimates that the piracy rate for CD’s in 1998 increased to a startling 30 percent.

Much pirated material continues to enter Brazil from across the border in Paraguay. Although efforts to patrol the border and ports have improved somewhat, these efforts have been inconsistent. The federal government has not given police the tools or the training to effectively enforce the law. Further, the penal code should be amended to provide higher fines that create a true deterrent to infringement, increase the effectiveness of the criminal enforcement system and decrease delays in the judicial process. The generally inefficient nature of the courts and judicial system have complicated the enforcement of intellectual property rights.

SERVICES BARRIERS

Brazil is overdue in providing to the World Trade Organization an acceptance of the Fifth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on financial services into effect..

U.S. service exports to Brazil are impeded by restrictive investment laws, lack of transparency in administrative procedures, legal and administrative restrictions on remittances and arbitrary application of regulations. Service trade opportunities in some sectors have been affected by limitations on foreign capital participation.

Telecommunications

Brazil's telecommunications sector has undergone significant liberalization in the past few years, although some limits remain on the level of foreign ownership. For example, the 1996 law opening cellular telephone service to foreign operators requires Brazilian majority ownership (51 percent) of any company or consortium providing telecommunications services in Brazil. The state-owned telephone system (Telebras) was sold in July 1998, with significant foreign participation. This privatization has presented regulatory challenges. ANATEL, the independent regulator, is in the process of developing a new quality certification program.

In addition, Brazil plans to limit competition with Embratel, the long distance and international carrier to a duopoly arrangement until December 2001, and Brazil does not require interconnection at cost-oriented rates. Interconnection with the incumbent carrier is allowed only at the local switch.

In the WTO negotiations on basic telecommunications services Brazil made commitments on most basic telecommunications services and committed to remove foreign investment restrictions on cellular and satellite services by July 20, 1999. Brazil is overdue in providing to the WTO an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring these commitments on basic telecommunications services into effect.

Brazil maintains an array of practices designed to favor public procurement of domestic over imported telecommunications equipment, including a system of preferences and a tax program that subsidizes domestic products. As the telecommunications services sector becomes more competitive under Brazil's new telecommunications law, it is unclear whether discriminatory equipment procurement practices will remain viable, insofar as such polices disadvantage public sector entities by imposing higher equipment costs upon them than private sector service providers.

Maritime

The 1996 cabotage law limits foreign participation in cabotage to countries which have reciprocal cabotage arrangements with Brazil, such as the United States. In other cases, cabotage services are limited almost exclusively to Brazilian companies, although foreign-made ships may be rented or chartered on a limited basis. Foreign companies or crews may operate only with prior approval of the Brazilian authorities. Actions taken by Brazil in late 1998 called into question Brazilian observance of the U.S.-Brazil Bilateral Maritime Agreement, signed by the Brazilian Government, but never ratified. In response to these actions, the U.S. Government has lifted its exemption of tonnage tax and lighthouse money for Brazilian ships. Both sides are expected to review the bilateral agreement in 1999.

Technical Services

Brazil has a requirement that 100 percent of all films and television be printed locally. Importation of color prints for the theatrical and television markets is prohibited. The limited number of printing laboratories in Brazil has made this requirement particularly onerous. A theatrical screen quota for local films was increased from 35 to 49 days per calendar year in December 1997.

In addition, Brazil does not allow the use of electronically produced air waybills, preventing use of certain kinds of software for express shipments and slowing the customs processing of critical "just-in-time" shipments.

Insurance

Brazil is South America's largest potential insurance market, and premiums have grown rapidly in recent years. In 1996, Brazil eliminated the distinction between foreign and domestic capital in this sector and a number of major U.S. firms have since entered the market, mainly via joint ventures with established companies. Brazil maintains a state-owned reinsurance monopoly, the 50 percent government-owned Brazil Reinsurance Institute (IRB). While a 1996 constitutional reform ostensibly eliminated this monopoly requirement, private reinsurers are precluded from operating in Brazil until implementing regulations have been completed. These regulations have been pending for three years. This practice effectively raises costs for both domestic and foreign insurers. The Brazilian Government has announced plans to privatize IRB in 1999 and made a WTO commitment in the financial services negotiations to allow foreign market access for reinsurance within two years of passage of implementing regulations in the sector. In addition, the Government of Brazil restricts import insurance to Brazilian firms by denying U.S. marine cargo insurers the opportunity to compete for business and requires state companies doing business with insurance brokerage firms to use 100 percent Brazilian-owned brokerages.

INVESTMENT BARRIERS

In addition to restrictions on services-related investments, various prohibitions limit foreign investment in internal transportation, public utilities, media and other "strategic industries." In other sectors, Brazil limits foreign equity participations, imposes local content requirements, and links incentives to export performance. For example, there are equity limitations, local content requirements, and incentive-based performance requirements in the computer and digital electronics sector. In the auto sector, local content and incentive-based export performance requirements were introduced in 1995, but will expire in December 1999. Brazil is currently engaged in negotiations with its MERCOSUL partners to develop a common MERCOSUL auto regime by that date.

Brazil's Congress passed constitutional amendments permitting foreign majority participation in direct mining operations, but actual changes will not occur until the 1995 constitutional amendments are implemented through follow-up legislation. In August 1995, the government introduced a measure which permits foreign financial institutions to open new branches or to increase their ownership participation in Brazilian financial institutions. However, foreign ownership of land in rural areas and adjacent to national borders remains prohibited under law number 6634. A 1997 law allows for the state-owned oil company, Petrobras, to take a minority stake in oil ventures, something previously prohibited. Despite investment restrictions, U.S. and other foreign firms have major investments in Brazil, with the U.S. investment stake more than doubling from 1994 to 1998.

BULGARIA

In 1998, the U.S. trade deficit with Bulgaria was $104 million, a decrease of $36 million from the 1996 deficit. U.S. merchandise exports to Bulgaria were $115 billion during 1998, an increase of $11 million from the level of U.S. exports to Bulgaria in 1997. Bulgaria was the United States' 106th largest export market in 1998. U.S. imports from Bulgaria were $219 billion in 1998, up almost 28 percent from 1997.
The stock of U.S. foreign direct investment (FDI) in Bulgaria in 1997 was $22 million, an increase of 22 percent from the level of U.S. FDI in 1996.

Bulgaria experienced a severe economic and political crisis in 1996 and early 1997. The crisis was triggered by a banking panic and culminated in a brief period of hyperinflation early in 1997. In April 1997, a New Union of Democratic Forces (UDF) government won pre-term parliamentary elections and rapidly reached agreement with the IMF and World Bank on a stabilization program. A currency board arrangement linking the Bulgarian lev to the German mark was introduced in July 1997. The program quickly succeeded in stabilizing the economy. The triple digit inflation of 1996 and early 1997 has given way to an official consumer price increase of 1 percent in 1998. Following declines in GDP in both 1996 and 1997, the economy grew by an estimated 4.5 percent in 1998. The government also succeeded in producing a balanced budget in 1998.

In September 1998, the IMF approved a three-year Extended Fund Facility (EFF) which provides credits worth about $864 million in support of the government's economic reform program. The government is seeking equivalent financing from the world bank, the European Union, and other donors. The World Bank disbursed a Financial and Enterprise Sector Adjustment Loan (FESAL) of $100 million in March 1998.

The government is committed to a broad program of structural reforms, including privatization of state-owned enterprises (SOES), and reforms of the social safety net and in the financial sector. Privatization proceeds in the first 11 months of 1998 amounted to USD 465 million, down from USD 572 million in 1997. The state plans to sell stakes in the monopoly telecommunications company (BTK), a large tobacco producer (Bulgartabak), the national airline (Balkan), and many other firms.

IMPORT POLICIES

The U.S.-Bulgaria bilateral trade agreement, in place since 1991, provides mutual Most-Favored-Nation (MFN) status. Bulgaria "graduated" from Jackson-Vanik requirements and was accorded Unconditional MFN treatment by the United States in 1996.

In January 1999, average Bulgarian import tariffs were reduced significantly and a 5 percent import surcharge was eliminated ahead of schedule. However, tariffs in areas of concern to U.S. exporters - including agricultural goods and inputs and distilled spirits - are still relatively high. In December 1998, the Bulgarian Parliament revoked exemption from VAT and customs duties for capital contributions in kind valued at over $100,000. In the past, some U.S. investors had reported that high import tariffs on products needed for the operation of their establishments in Bulgaria served as a significant barrier to investment.

Bulgaria

Bulgaria's Association Agreement with the European Union phases out tariffs between Bulgaria and the EU while U.S. exporters still face duties. This has created a competitive disadvantage for some U.S. exporters. For example, duty on soda ash from the EU will be phased out by 2002, while a 40 percent tariff on soda ash imports from the United States and other countries will be maintained. Lost U.S. soda ash exports could reach USD 5 to 25 million by 2002. The EU Association Agreement also improved reciprocal market access to certain farm products. In July 1998, Bulgaria joined the Central European Free Trade Area (CEFTA). Over the next three years, tariffs on 80 percent of industrial goods traded between CEFTA countries will be eliminated. In addition, a free trade agreement with Turkey took effect in January 1999.

Import licenses are required for a limited list of goods including arms, radioactive elements, rare and precious metals and stones, certain pharmaceutical products and pesticides. Bulgaria uses the single customs administrative document used by European Community members. Nonetheless, customs regulations and policies are sometimes reported to be cumbersome, arbitrary, and inconsistent. Problems cited by U.S. multinational corporations include excessive documentation requirements, slow processing of shipments and corruption.

As in other countries aspiring to membership in the European Union, Bulgaria's 1998 radio and television law requires a "predominant portion" of certain programming to be drawn from European-produced works and sets quotas for Bulgarian works within that predominant portion. However, this requirement will only apply "whenever practicable." The law also requires foreign television entities transmitting programs in Bulgaria to have a local subsidiary or agent, and prohibits broadcasters from entering into barter agreements with television program suppliers.

Bulgaria acceded to the World Trade Organization in December 1996.

GOVERNMENT PROCUREMENT

Bulgaria adopted a public procurement law in 1997 in accordance with its commitment to accede to the WTO agreement on government procurement. Bulgaria is also an observer to the WTO committee on government procurement. Under the law, bidders may appeal against violations of the applicable procedures. General government supervision of compliance with the procurement law is exercised by the national audit chamber. However, bidders still complain that tendering processes are frequently subject to irregularities, fueling speculation on corruption in government procurement.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Bulgarian intellectual property legislation is generally adequate, with modern patent and copyright laws and criminal penalties for copyright infringement. In January 1999, the Bulgarian Government approved amendments to the copyright law, aimed at harmonizing the legal regime with that of the European Union, as well as bills governing protection of trademarks and geographic designations, industrial designs and the topology of integrated circuits. These amendments have not yet been reviewed by parliament. A law for the protection of new types of plants and animal breeds was adopted in September 1996.

Bulgaria

Until recently, Bulgaria was the largest source of CD and CD-ROM. piracy in Europe and one of the world's leading exporters of pirated goods. For this reason, Bulgaria was placed on the Special 301 Priority Watch List in January 1998. In 1998, intellectual property rights enforcement improved considerably with the introduction of a CD production licensing system. All CD production facilities were initially closed down and those which received licenses are subject to 24-hour surveillance. Bulgaria's title verification decree was also amended to require CD manufacturers to present an agreement with the author or collecting society before starting production and to improve coordination between the ministry of culture and Bulgarian law enforcement authorities. In recognition of the Bulgarian Government's efforts in curbing piracy during 1998, Bulgaria was moved to the watch list in November 1998. Nonetheless, gaps in the title verification system, lack of prosecution of producers and distributors, and customs enforcement continue to be causes of concern.
U.S. industries report that lack of effective judicial remedies for infringement of intellectual property rights as a barrier to their investment in Bulgaria. Companies cite illegal use of trademarks and trade dress as barriers to the Bulgarian market. Pharmaceuticals manufacturers report slow and ineffective enforcement of patent rights for their products.

While audiovisual piracy in Bulgaria is considerable, enforcement and the legal regime, including a new media law and amendments to the title verification decree described above, improved in 1998. While an estimated 80 percent of films transmitted on cable television and 40 percent of those broadcast by private television stations were unauthorized early in 1998, broadcast piracy dropped dramatically as enforcement activity increased later in the year. Sales of pirated videocassettes have declined in recent years, but still account for approximately 40 percent of the market, according to industry sources.

In December 1998, the Minister of State Administration signed an agreement with Microsoft which commits the Bulgarian Government to license all company products. In turn, Microsoft will reinvest a large portion of its royalties in training civil servants, teachers, and students and in technology transfer. The minister announced that similar contracts would be signed with other information technology firms in 1999.

INVESTMENT BARRIERS

In September 1992, the United States and Bulgaria signed a bilateral investment treaty which was implemented in 1994. The United States is the third-largest foreign investor in Bulgaria, and was the largest source of direct foreign investment during 1998.

Foreign investment in state-owned enterprises has been hampered by a number of factors, including non-transparent bidding requirements and procedures and preferences for management-employee buyouts for smaller firms. U.S. companies also report non-transparent regulations, a high and arbitrarily enforces tax burden, and crime as impediments to investment. The 1995 concessions law has been criticized for complicating investments in a range of sectors, including mining, oil and gas exploration, pipelines and telecommunications.

The Bulgarian Government has taken some steps to improve the investment climate, including enactment of a foreign investment law crafted with input from multinational companies and recent reductions in corporate profits and value-added taxes. The government aims to replace existing tax preferences for foreign investors with a new set of incentives which would be available to both domestic and foreign investors.

CAMEROON

In 1998, the U.S. trade surplus with Cameroon was $22 million, a decrease of $43 million from the 1996 surplus. U.S. merchandise exports to Cameroon were $75 billion during 1998, a decrease of $47 million from the level of U.S. exports to Cameroon in 1997. Cameroon was the United States' 120th largest export market in 1998. U.S. imports from Cameroon were $53 billion in 1998, down 4 percent from 1997. The stock of U.S. foreign direct investment (FDI) in Cameroon in 1997 was $218 million, an increase of 20 percent from the level of U.S. FDI in 1996.

IMPORT POLICIES

Cameroon has been operating under the Central African Customs Union regional reform program since 1994. The program has been expanded to include a new customs code and an amendment to the investment code. The new code eliminates most quantitative restrictions on external trade and simplifies customs assessments. The generalized preferential tariff was eliminated completely for goods being shipped to UDEAC/CEMAC countries on January 1, 1998. Starting in 1999, only the value added tax will be collected on intra-regional goods. On January 1, 1999, Cameroon converted its business taxation system from a turnover tax (TCA) to a modern value added tax (TVA) at a flat rate of 18.7 percent. The government moved to intensify customs revenue collection efforts by granting a monopoly to a private Swiss company (SGS) to assess and collect customs duties.

Customs valuation

Customs taxes in Cameroon are levied on the cif value of imported goods. The prevailing practice, however, is to value the goods at the list price of the goods in the country of origin and include the cost of freight to Douala (the principal port of the country).

Import licensing

Import licensing has been simplified. A prospective importer is now only required to have a so-called "Agreement." The "Agreement" is a two-year renewable import license that covers any item an importer may choose. Special permits are granted to those who import items for personal use. Contractors importing equipment and supplies relating to public contracts can obtain a tax-free exception from the Ministry of Economy and Finance.

Documentation Requirements

Cameroon requires a commercial invoice and a bill of lading for all goods entering the country. Shipping marks and numbers must match exactly those on the invoices and the goods. Three copies of the invoice are necessary for surface shipments while four copies are necessary for air shipments. The importer must also present an import license, permit, or exemption where required. Documentation on bank transactions is required only if the value of the imported goods is over two million CFA francs. A pre-shipment inspection certificate, called the bill of clean findings, must also be obtained from SGS for shipments over this amount.

Certificates of non-infestation are required for certain imports. SGS may inspect the quality of any goods shipped into the country.

GOVERNMENT PROCUREMENT

Government procurement is administered by the Public Works Directorate. Cameroonian companies are granted preferential price margins and other preferences on all government procurement and development projects. Because of Cameroon's low credit rating, governmental direct purchases are now made through domestic middlemen who require cash up-front on behalf of their foreign correspondents.

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EXPORT SUBSIDIES

Coffee and cocoa exports must obtain a quality grade certification from the Coffee and Cocoa Board prior to export. Export licenses are also required for "strategic" products such as gold and diamonds and for ecologically sensitive items (i.e., governed by the CITES convention) such as live animals, birds and medicinal plants. In January 1998, the government removed petroleum and hydrocarbons from the list of sensitive products subjected to prior price assessment procedures. No known export subsidies are currently available. In the past, heavy export taxes have penalized exports of agricultural products.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Cameroon is the headquarters for the 14-nation West African Intellectual Property Organization (OAPI). OAPI is a member of the World Intellectual Property Rights Organization (WIPO). OAPI offers registration for patents and trademarks. Patents in Cameroon are initially good for forty years, and subsequently renewable every five years if the patent was used in an OAPI member country at least once.
Compulsory licensing also exists. Trademarks initially last for 20 years, with renewal possible every ten years thereafter. Trademark enforcement is weak due to the small size of the domestic market and the cost of enforcement.

SERVICES BARRIERS

At the opening of the Uruguay round negotiations, Cameroon presented conditional offers on market access for services. Cameroon made a commitment on non-application of limitations relative to market access and national treatment relating to maintenance and tourism. However, later in 1994, Cameroon eliminated most restrictions on external trade. Exceptions are now only placed on so-called "strategic" goods and services such as water electricity, public transportation (road and rail), and telecommunications.

A new law governing telecommunications in Cameroon has recently been adopted. This law provides that the regulation, control and oversight of the telecommunications sector will be the responsibility of a telecommunications board. The new law also establishes a modern framework for the development of Cameroon's telecommunications sector in the context of liberalization, privatization and fair competition. One private operator will be allowed a portion of the cellular market, while operation on the fixed network, currently run by the state owned company Camtel, will soon be offered up to private interest. Cellular phone service, launched in July 1993 to cover a limited geographical area, operates on the GSM 900 standard.

Cameroon

Cameroon is one of the fourteen French-speaking African nations that ratified the CIMA treaty and adopted a common code. This supranational code is supposed to regulate the insurance sector in all signatory states. However, because of the poor state of the country's insurance sector, Cameroon may well invoke an exception for this sector at some future time.

Cameroon's banking system is controlled by the Banque des Etats de l'Afrique Centrale (BEAC), a common central bank also serving the five other member countries of the Central Africa subregion. The banking system is made up of nine operating banks. Despite undergoing a prolonged decade of restructuring, many of these are still fragile. The banks' contribution to the reviving economy has been marginal in recent years as all of the banks are only willing to finance short term operations. With one exception, commercial banks remain undercapitalized and none meets all of the prudent criteria set forth by the regional central bank (BEAC).

Infrastructure for distribution of goods is not fully developed, but permits limited access to all ten provinces. The major port in Cameroon is Douala. There is a relatively well developed rail system and three international airports, along with 50 small airports/airstrips. In order to conform with further WTO open access criteria, in December 1997, the government liberalized the auxiliary maritime and ports authority services, to include maritime transportation of Cameroonian exports and imports.

INVESTMENT BARRIERS

Cameroon has undertaken a serious effort to attract foreign investment, and its legal regime contains the basic elements needed to provide an open investment climate. Nonetheless, an arbitrary application of government controls and a legal system prone to corruption and favoritism has hindered the investment environment. The Cameroon investment code is currently pending revision to ensure greater transparency.

ELECTRONIC COMMERCE

Internet access is in its infancy in Cameroon, and therefore legislation for this sector has yet to be developed. Currently, no special restrictions have been imposed.

OTHER BARRIERS

Agent and Distributor Rules

Agents and distributors must register with the government and contracts must be notarized and published in the local press.

Procedural and Financial Irregularities

The flawed judicial system is a major obstacle to development of Cameroon's economy and society. The judiciary is often arbitrary, and persons accused of corruption by the local press are seldom called to account before the courts. If they are called, persons often find it easier and cheaper to bribe a judge than pay a lawyer to win the case. Under the current judicial system, local and foreign investors, including some U.S. firms, have found it complicated and costly to enforce contract rights, protect property rights, a fair and expeditious hearing before the courts or defend themselves against frivolous lawsuits. However, the recently implemented "Organization for the Harmonization of Business Law in Africa" (Organisation Pour L'Harmonisation du Droit des Affaires en Afrique, or OHADA) treaty offers some hope for reform of the judiciary.

CANADA

Canada continues to be the United States' foremost export market and single largest trading and investment partner. In 1998, the U.S. trade deficit with Canada was $20.7 billion, a decrease of $2.8 billion from the 1997 deficit. U.S. merchandise exports to Canada were $154.2 billion during 1998, an increase of $4.0 billion from the level of U.S. exports to Canada in 1997. Canada was the United States' largest export market in 1998. U.S. imports from Canada were $175.0 billion in 1998, up 4 percent from 1997.

The United States continues to be by far the largest foreign direct investor in Canada. At the end of 1997, the stock of U.S. foreign direct investment was an estimated $100 billion. U.S. investment in Canada, which is a major contributor to the U.S. non-merchandise trade surplus with Canada, is concentrated in manufacturing, natural resources and financial sectors.

A Trading Relationship Based on Free Trade

On January 1, 1994, the entry into force of the North American Free Trade Agreement (NAFTA) superseded the U.S.-Canada Free Trade Agreement (CFTA) and expanded the free trade area to Mexico. The NAFTA extended the CFTA to important sectors such as trade in services, investment, and government procurement. The bilateral phase-out of tariffs between Canada and the United States outlined in the CFTA and now the NAFTA was completed on January 1, 1998, except for certain supply managed products in Canada and dairy, sugar, peanuts and cotton in the United States. However, some non-tariff barriers remain at both the federal and provincial levels, impeding access to the Canadian market for U.S. goods and services.

Also, liberalization of cross-border trade has drawn increased attention within Canada to certain long-standing barriers to trade in goods and services among Canadian provinces, notably those affecting government procurement and professional services. While provincial governments reached an agreement in 1994 to work toward the removal of these barriers between them, there has been little further progress in these areas, which is indicative of the difficulties in obtaining the elimination of barriers at the provincial level.

IMPORT POLICIES

Supply Managed Products

Canada closely restricts imports of certain "supply-managed" agricultural products whose domestic production is limited by quota (dairy products, eggs and poultry), severely limiting the ability of U.S. producers to export to Canada.

As part of its implementation of the World Trade Organization (WTO) Agreements in 1995, Canada replaced its import quotas on these commodities with tariff rate quotas (TRQs). Under the TRQ system, small amounts of imports can enter at a relatively low rate of duty, but imports above those limits are subject to prohibitively high duties ranging up to 300 percent.

Despite its Uruguay Round commitments, Canada does not allow access for commercial fluid milk imports. Canada's system of special milk classes also allows processors to purchase milk at prices that are below the comparatively high domestic milk prices in Canada. Without milk at such discounted prices, Canada's dairy product exports would be uncompetitive.. Canada viewed the creation of such special classes of milk as an acceptable method to maintain Canadian dairy exports, without the use of producer levies.

In October 1997, the United States requested consultations under GATT Article 22 pertaining to Canada's compliance with its WTO obligations to limit dairy export subsidies and to provide access in the form of a TRQ for its fluid milk market. In December 1997, New Zealand also requested consultations with Canada on the same matter, excluding the TRQ issue. A panel was established in March 1998, and issued its final report in March 1999. The panel found that Canada's milk system constitutes an export subsidy within the meaning of the WTO Agreement on Agriculture because of the significant involvement of government authorities in the provision of milk inputs to dairy product exporters at prices substantially below the levels otherwise available in Canada. The panel also found that the restrictions that Canada placed on the scope of access under its tariff rate quota for milk were inconsistent with its obligations under the GATT 1994. The panel recommended that Canada take action to conform both of the relevant measures to its WTO obligations.

Horticultural Import Restrictions

Canadian regulations prohibit consignment sales of imported fresh fruits and vegetables without a prearranged buyer. Other restrictions prohibit bulk produce imports without a special ministerial waiver from Canadian packaging regulations. Canada imposes extensive requirements on U.S. exports of seed potatoes into Canada. U.S. seed potatoes must meet complicated and unnecessary testing requirements.

Other Products

The Province of Quebec continues to apply coloring restrictions on dairy margarine. In addition, provincial marketing restrictions to butter/margarine blends or imitation dairy products have served as a limitation and in certain cases, prohibition to the sales of these products into many provinces.

Restrictions on U.S. Grain Exports

U.S. access to the Canadian grain market has been limited due in part to Canadian varietal controls. Canada requires that each variety of grain be registered and be visually distinguishable. Because U.S. varieties may not be visually distinct, they are not registered in Canada, resulting in top quality wheat being sold in Canada as "feed" wheat at sharp discounts to the Canadian varieties.

Canadian Wheat Board

The Canadian Wheat Board (CWB) has exclusive authority to market western Canadian wheat, durum wheat, and barley for export. It also controls milling wheat and malting barley sales domestically. The United States has been working to have the export activities of state trading enterprises, such as the CWB, addressed in the WTO Working Party on State Trading Practices on Agriculture.

In October 1998, the GAO released a study on the CWB which concludes that little information on CWB contracts is publicly available. The U.S. grain industry has expressed concern that a lack of price transparency makes it difficult to determine whether the CWB is operating within its international obligations.

Under the December 1998 Record of Understanding, the United States and Canada agreed to at least quarterly consultations on Canada's grain exports to the United States. In addition, , the United States has established a special inter-agency group to monitor Canadian wheat imports and implmentaton of the December 4, 1998 Record of Understanding on agricultural trade in an effort to ensure that the Canadian Wheat Board is not pricing grain unfairly into the U.S. market.

EXPORT SUBSIDIES

The Canadian Egg Marketing Agency (CEMA) maintains an export subsidy for processed egg products. Under that regime, the domestic Canadian price for shell eggs is maintained at a level substantially above the world price. At the same time, producers are assessed a levy on all eggs sold and a portion of the levy is used to subsidize the exports of eggs. This practice artificially increases Canadian exports of egg products.
Provincial governments in Canada are believed to provide a variety of aids that support production and exports. Many of these mechanisms are not reported by Canada in its WTO notifications. For instance, producers and processors may benefit from credit assistance programs and preferential energy supply policies.

BARRIERS TO NON-AGRICULTURAL GOODS

Restrictions on U.S. Publications

In March, 1996, USTR initiated a Section 301 investigation and requested consultations with the Government of Canada to address certain discriminatory practices used by the Government of Canada to unfairly protect Canada's domestic magazine industry. Subsequently, USTR requested that a WTO panel be formed to consider Canadian measures prohibiting or restricting the importation into Canada of "split-run" and other imported magazines, including a ban on imports of magazines with advertising directed at Canadians, a special excise tax on "split-run" magazines, and discriminatory postal rates on imported magazines.

WTO panel findings, as amended by the WTO Appellate Body, supported all U.S. claims. The panel recommended that Canada bring its practices into conformity with its WTO obligations. The parties agreed on a 15-month time frame (from July 30, 1997) for Canada to implement the panel recommendations. In October 1998, Canada tabled legislation which will have effects similar to the previous measures, by making it a criminal offense for foreign publishers to supply advertising services directed at the Canadian market to Canadian advertisers. As of March1999, this legislation was still before Parliament, although it has passed the lower Chamber.

Barriers to Film Exports

Film classification, for the purpose of theatrical and home video distribution in Canada, is within the exclusive jurisdiction of the provinces. There are presently seven different provincial classification boards to which member companies must submit product destined for theatrical release, five of which also classify product intended for home video distribution. The Province of Quebec requires that all video product bear a government issue classification sticker. U.S. exports are burdened by this added regulatory requirement resulting in fewer titles being made available. The lack of a national system and the negative precedent established by the Quebec stickering procedures, continues to create significant consumer confusion and administrative expense resulting in fewer U.S. exports.

LACK OF INTELLECTUAL PROPERTY PROTECTION

On April 25, 1997, Royal Assent was given to Bill C-32, legislation containing extensive amendments to Canada's Copyright Act. Bill C-32 was intended to further modernize Canadian copyright law and harmonize it with certain international copyright conventions.

The United States has expressed concerns to Canada because Bill C-32 potentially denies U.S. copyright holders certain broadcast rights and blank tape levy payments. These payments technically are supposed to be collected and distributed to Canadian copyright holders and to other copyright holders who are members of the Rome Convention. Under Bill C-32's provisions affecting "neighboring rights" and recording media, U.S. performers and producers will be denied proceeds, which is a denial of national treatment to U.S. copyright holders. The USTR announced on April 30, 1997, that due to these provisions, Canada was placed on the Special 301 Watch List, where it remained as of early 1999.

On September 1, 1997 the neighboring rights sections of the legislation were promulgated, and on January 1, 1999 the recorded media sections were promulgated. However, Canada has yet to determine the size of the levy payments for either section, and while both are legally in effect, neither neighboring rights fees nor recorded media levies have been implemented. The two governments are exploring mechanisms that would grant U.S. copyright holders equal treatment. USTR remains concerned by Canada's denial of national treatment of U.S. companies and artists, and will continue to monitor Canada's implementation of the law.

Concerns are increasing over continued cable and satellite signal piracy and we seek intensified efforts by the Government of Canada to aggressively enforce its anti-piracy laws.

In the field of patents, Canada has yet to correct its failure to grant a TRIPs-consistent term of protection for pharmaceutical products, which were under patent as of the date Canada’s WTO/TRIPs obligations came into force.

SERVICES BARRIERS

Broadcasting

The Broadcasting Act lists among its objectives, "to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada." The federal broadcasting regulator, the Canadian Radio-Television and Telecommunications Commission (CRTC), is charged with implementing this policy. The CRTC requires that Canadian broadcasts make up 60 percent of television broadcast time -- 50 percent during prime time hours (6 p.m. to midnight). It also requires that 35 percent of musical selections broadcast on radio should qualify as "Canadian" under a Canadian Government-determined points system.

Under previous CRTC policy, in cases where a Canadian service was licensed in a format competitive with that of an authorized non-Canadian service, the Commission could drop the non-Canadian service, if the new Canadian applicant requested it to do so. This policy led to one "de-listing" in 1995, and deterred potential new entrants from attempting to enter the Canadian market. In July 1997, the CRTC announced that it would no longer be "disposed" to take such actions. Nonetheless, Canadian licensees may still appeal the listing of competitive non-Canadian services. Also, the CRTC will consider the removal of existing non-Canadian services from the list if they change format so as to compete with a Canadian pay or specialty service.

The Broadcasting Act requires Canadian cable television providers to carry a majority of Canadian signals and services -- although service packages which are not "programming" may consist entirely of non-Canadian material. Also, U.S.-originated signals on non-basic pay television must be selected from a CRTC-approved list, from which U.S.-based services which are deemed to be competitive with already-licensed Canadian services are excluded.

Direct-to-Home Satellite Broadcasting

On December 20, 1995, the CRTC issued two national direct-to-home (DTH) satellite TV licenses, one of which went to U.S.-associated Power Direct TV. However, Power Direct TV has since abandoned its plans to launch a Canadian service because of technological issues, some of which were associated with CRTC regulations.

Simultaneously with the licensing of the two DTH systems, a number of DTH pay-per-view (PPV) services were also licensed. The DTH licenses specify that the only PPV services the two DTH licensees may offer are those services licensed by the CRTC. The PPV licenses are further conditioned in two significant respects.

First, it is a condition of license that feature film rights must be acquired from Canadian distributors except where the film is offered by a foreign distributor who owns worldwide rights or who has provided not less than half of the cost of producing the film. The U.S. Government and the U.S. industry are concerned that this condition of license, in effect, gives Canadian companies monopoly distribution rights with respect to certain films.

Second, it is a condition of license that 100 percent of revenues earned from the exhibition of Canadian feature films be paid to the producer/distributor. However, revenues earned from the exhibition of all non-Canadian feature films offered on English language services must be split, on a title by title basis, one-third to the DTH service, one-third to the programming undertaking, and one-third to the producer/distributor. U.S. industry sources believe that the likely effect of this restriction will be to restrain competition.

The Canadian Motion Picture Distributors Association and a number of U.S.-based studios appealed the licensing conditions to the Canadian Federal Court of Appeal on January 26, 1996, and to the Canadian federal Cabinet on February 2, 1996. On March 19, 1996, the Cabinet rejected the appeal, apparently deciding that the matter would best be dealt with by the courts. On June 26, 1996, the Federal Court of Appeal also ruled against the appeal.

Canada also imposes specific and extensive content requirements on television and cable broadcasting. DTH broadcasts must contain a preponderance (more than 50 percent) of Canadian content. For some specialty services like pay audio services, the applicable percentage of Canadian content is subject to change. USTR will continue to closely monitor the effect of these policies on U.S. commercial interests.

Basic Telecommunications Services

Canada's recent liberalization of telecommunications opened both long-distance and local telephone services to competition. Canada's Telecommunications Act allows the federal regulator, the Canadian Radio-Television and Telecommunications Commission (CRTC), to "forbear" from regulating competitive segments of the industry, and exempts resellers from regulation. The use of pay telephones to provide services on a resale basis is not permitted. Some U.S.-based entrants have expressed concern that "forbearance" is being applied prematurely, which may allow incumbent firms to engage in anti-competitive behavior.

Under the terms of the WTO Agreement on Basic Telecommunications Services, Canada's commitments permit foreign firms to provide local, long-distance, and international services through any means of technology, on a facilities or resale basis. However, Canada retained a 46.7 percent limit on foreign ownership for all services except fixed satellite services and submarine cables. Canada also retained a requirement for "Canadian control" of basic telecom facilities (at least 80 percent of the members of a board of directors must be Canadian citizens), and a routing restriction to promote the use of Canadian facilities.

In September 1998, Canada eliminated third country routing restrictions for international traffic routed to and from Canada through the United States. Teleglobe Inc. is no longer the sole overseas facilities-based provider as of January 1, 1999, and licenses to land submarine cables are no longer limited. Telesat Canada will relinquish its monopoly control of fixed satellite space segment facilities used to provide national and U.S.-Canada telecommunications services on March 1, 2000.

The 1976 tax provision denying Canadian enterprises tax deductions for the cost of advertising in foreign print and broadcast media, aimed primarily at U.S. border television stations, remains in effect. U.S. legislation enacted in 1984 to mirror the Canadian measure also remains in force.

Banking and Insurance

The banking industry in Canada is governed by the Federal Bank Act, which is currently undergoing review and reform by the Government of Canada. At present, a foreign bank wishing to conduct business in Canada must establish a subsidiary (a Schedule II bank) under Canadian law. However, as part of the WTO Financial Services Agreement signed in December 1997 (which Canada has introduced legislation to ratify), Canada agreed to permit foreign branch banking by July 1999. Legislation to put this into effect was delayed pending the completion of a report by a federal Task Force on the Future of the Canadian Financial Services Sector. This report, issued on September 14, 1998, recommended that foreign branch banking be permitted.
The government has since stated that it supports liberalization of the banking sector and enhancing competition because it is in the public interest. Canada undertook obligations to liberalize branching effective June 30, 1999. Changes which would allow foreign branch banking were introduced to Parliament in February 1999.

Currently, U.S. insurance companies may enter Canada as branches, but some provinces bar foreign companies from buying provincially-chartered insurance companies. Following a recommendation by the 1998 Financial Services Task Force, on November 30, 1998, legislation was proposed in Parliament to allow demutualization of large Canadian life insurance companies, which the government expects to pass into law during 1999.

Electric Power

Electric power generation and distribution in Canada has traditionally been dominated by provincial government-owned monopoly utilities, several of which export significant amounts of power (totaling about US$1 billion annually) to the United States under long-term contracts, but import only a fraction of this amount on a short-term basis, mainly to satisfy peak demand loads.

Several of the larger provinces (including Alberta and Ontario) are now planning to move toward fully competitive electricity markets, including cross-border competition from U.S. firms. Some major utilities (including B.C. Hydro) have already obtained wholesale power marketer licenses from the U.S. Federal Energy Regulatory Commission, a condition of which is that they allow reciprocal open access to their distribution grids for wholesale power. Meanwhile, U.S. utilities and power brokers have been obtaining export licenses from the U.S. Department of Energy in anticipation of being able to compete in Canadian power markets. The restructuring of electric power markets is expected to continue at a rapid pace, benefiting consumers and industries in both countries.

INVESTMENT BARRIERS

General Entry Restrictions

Under the Investment Canada Act and specific Canadian policies in the energy, publishing, telecommunications, transportation, film, music, broadcasting, and cable television sectors, Canada maintains laws and policies which inhibit new or expanded foreign investment.

Investment Canada Act

Foreign investors must notify the Canadian Government within thirty days of making an investment in Canada. The Investment Canada Act requires the federal government to review certain proposed foreign investments in order to ensure "net benefit to Canada." In 1998, for foreign investors from WTO member countries, indirect acquisitions were not reviewable but direct acquisitions worth over $179 million (asset values, in Canadian dollars) were reviewable unless specifically exempted. For acquisitions in uranium production, financial or transportation services, or cultural businesses, direct acquisitions worth over C$5 million and indirect acquisitions worth over C$50 million were reviewable.

In "cultural businesses," which include publishing, film, video, music and broadcasting, any directly or indirectly acquired foreign investment may be reviewed, if the Cabinet so decides and if the investor is notified within 21 days of the notification of investment. This regime effectively allows Canadian officials to impose conditions on prospective foreign investments on a case-by-case basis.

Publishing Policy

Prior to 1992, when ownership of a firm engaged in the publication, sale, or distribution of books, magazines, periodicals, or newspapers in Canada passed to foreign investors as a result of mergers and acquisitions of foreign parent firms or "indirect acquisition," Canada required divestiture of control to Canadian investors. Since January 1992, Canadian book publishing and distribution firms that fall into foreign hands through indirect acquisition need not be divested to Canadian control, but the foreign investor must negotiate specific commitments to promote Canadian publishing. Foreign investors may directly acquire Canadian book firms under limited circumstances. Also, since 1993, Canada treats the publication of any new magazine title by foreign-owned firms as a new investment subject to review. Under current policy guidelines, approval for a new magazine title would not be granted. The United States is monitoring the effect of these policies on U.S. interests.

Film Industry Investment

Canadian policies prohibit foreign acquisitions of Canadian-owned film distribution firms and allow foreign investors to establish new distribution firms only for proprietary products. Indirect or direct acquisition of a foreign distribution firm operating in Canada is only allowed if the investor undertakes to reinvest a portion of its Canadian earnings in a manner specified by the Canadian Government.

The Canadian Government is currently considering a range of possible policies to encourage more Canadian film production. Simultaneously, its broadcasting regulator, the CRTC, is reviewing both the television industry and the "new media" industries. We are monitoring closing changes in this area.

Performance Requirements

Reviews by Investment Canada of prospective foreign investments involves an examination of the investor's business plan. Approval of the investment creates a legal obligation on the part of the investor to fulfill the business plan, which may include commitments in areas such as research and development or the promotion of Canadian authors. NAFTA made progress toward ending the imposition of performance requirements on U.S. investors, and on third country investors when U.S. trade interests would be affected. The United States will continue to pursue the elimination of investment restrictions, including performance requirements, both bilaterally and multilaterally.

ELECTRONIC COMMERCE

There are currently few barriers to U.S.-based electronic commerce in Canada. In the WTO context, Canada has been supportive of a duty free cyberspace. Canada also hosted the October 1998 OECD electronic commerce ministerial, contributing significantly to further progress on advancing barrier-free electronic commerce. The conference articulated a "shared vision" for global electronic commerce which includes the following elements: building trust for users and consumers; establishing ground rules which keep legal frameworks transparent, consistent and predictable; enhancing infrastructure through effective competition in telecommunications; and maximizing the benefits of the digital economy.

Canada

Several Canadian policy initiatives are underway in this area. These include a proposed new federal privacy law (Bill C-54), and a CRTC review of "new media" which is expected to address the question of regulatory jurisdiction over the Internet. The United States is monitoring the possible effects of these initiatives on U.S. interests.

CHILE

The 1998 U.S. trade surplus with Chile reached $1.5 billion, a half billion decrease from 1997. U.S. imports from Chile in 1998 totaled $2.5 billion, while U.S. exports to Chile in 1998 were $4.0 billion. Chile is the 28th largest export market of the United States. In 1997, U.S. foreign direct investment (FDI) was $8 billion.

IMPORT POLICIES

Chile has a generally open trade regime. In January 1999, Chile's uniform *ad valorem* tariff decreased from 11 percent to 10 percent for imports from all countries that have not already negotiated free trade agreements with Santiago. The uniform tariff is set to decline by one percentage point per year until it reaches six percent in 2003. Imports of used goods, however, are assessed a 16.5 percent tariff, while computer products enter Chile duty free. Virtually all of Chile's tariffs are bound at 25 percent *ad valorem*, with the exception of tariffs for wheat, flour, vegetable oil, and sugar, which are bound at 31.5 percent. Despite Chile's relatively progressive trade regime, some significant barriers still exist.

Chile maintains a complex price band system for certain agricultural products that keeps domestic prices within a predetermined range. Due to low international wheat prices in 1998, the price band system led to applied import duties as high as 45-50 percent, well above Chile's WTO bound rate of 31.5 percent. In the case of wheat flour, the price band system serves to protect Chilean millers from low-priced MERCOSUR flour imports.

Chilean law also permits the government to impose minimum customs value requirements for imports of agricultural products in response to low world prices. While Chile is not obligated to terminate this program until the year 2000, when its transition period for implementation of the WTO Agreement on Customs Valuation expires, it has not applied the law since 1995. In addition, the importation of used automobiles is prohibited.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Chile's strict animal health and phytosanitary requirements prevent the entry of some imports. In addition, announcement of proposed rule changes, notifications of proposals to other members via the WTO Secretariat and opportunity for public comment often fail to precede the actual promulgation of new requirements. As a result of efforts by the U.S. Government on sanitary and phytosanitary issues, Chile has begun to open its market to some trade in horticultural products. Chile has granted approval for citrus, table grapes, kiwis, apples, and pears from the U.S. West Coast. In addition, U.S. exports of fresh and frozen poultry are effectively blocked from the Chilean market by a sanitary requirement that the United States considers unjustified. The U.S. Government has protested this requirement to the Chilean Government and has raised the issue in the WTO Sanitary and Phytosanitary Committee. According to U.S. and Chilean industry sources, U.S. dry peas exported to Chile are subject to Chilean fumigation requirements although Canadian dry peas are not. U.S. beef exports have been affected by restrictive and rigid Chilean labeling and grading regulations. Chile does not permit U.S. beef in consumer cuts to enter the market without being graded to Chilean standards, which are incompatible with the U.S. grading system. Because Chilean meat grades originate from carcass grades at the time of slaughter, this requirement effectively blocks U.S.-produced beef from the market, although meat that will undergo further processing is not affected. The United States will continue to press Chile to implement and enforce WTO-consistent sanitary and phytosanitary requirements.

EXPORT SUBSIDIES

Chile employs a number of export promotion measures to help non-traditional exports, including through the Chilean Government's active export promotion agency. In addition, the Chilean forestation subsidy program was reinstated in 1998. Chile provides a simplified duty drawback program for non-traditional exports which does not reflect actual duties paid on imported components. In general, Chile's export promotion measures are intended to expedite and simplify the paperwork involved in the export process. The Government of Chile also provides exporters with quicker returns of value-added taxes than it provides to other producers. One such export promotion measure lets all exporters defer import duties for up to seven years on imported capital equipment or receive an equivalent subsidy for domestically produced capital goods. Chile has announced that, in accordance with its WTO commitments, the drawback program will be phased out; legislation to effect this change is anticipated in 1999.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Patents and Trademarks

Chile implemented a patent, trademark and industrial design law in 1991 that provides product patent protection for pharmaceuticals and a limited form of pipeline protection. While the law is generally strong, deficiencies exist, including: a term of protection that is not consistent with the TRIPs term of 20 years from filing; a lack of provisions for restoring patent terms for delays in marketing due to regulatory approval processes; inadequate industrial design protection; and a lack of full "pipeline" protection for pharmaceutical products patented in other countries prior to the time product patent protection became available in Chile. The Government of Chile has announced its plans to introduce legislation in early 1999 to make its intellectual property laws fully TRIPS-consistent.

Another concern with Chile's intellectual property regime is a backlog of patent applications, which the Government of Chile has begun to address. Also of concern is the lack of adequate and effective protection of proprietary test data; Chile does not provide a term of protection for test data consistent with international standards.

Chile's trademark law is largely consistent with international standards, but contains deficiencies, including: no requirement of use to maintain trademark protection; a "novelty" requirement for trademark registrations; unclear provision for trademarking figurative marks, color or packaging; and no provisions for protection of "well-known" marks. Some U.S. trademark holders have complained of inadequate enforcement of trademark rights in Chile.

Copyrights

Chile revised its copyright law in 1992, extending the term of protection to the author's life plus 50 years, the standard in the TRIPs Agreement. While the copyright law provides protection that is nearly consistent with international standards in most areas, deficiencies remain. The Chilean law does not clearly protect computer software as a "literary work," does not provide clear rental and importation rights, allows for inadequate penalties, has no provision for *ex parte* civil searches, is uncertain as regards the availability of injunctions and temporary restraining orders, and places unnecessary constraints on contractual rights. Despite active enforcement efforts, piracy of computer software remains significant.

SERVICES BARRIERS

Chile's relatively open services trade and investment regime stands in contrast to its relatively limited GATS commitments. In particular, Chile maintains a "horizontal" limitation (a restriction applying to all sectors in Chile's GATS schedule), under which authorization for foreign investment in service industries may be contingent on a number of factors, including employment, the use of local inputs, and competition. This limitation appears to undermine the commercial value and predictability of Chile's GATS commitments.

Chile has already made WTO commitments on most basic telecom services, adopted the WTO reference paper on regulatory commitments and ratified the GATS Fourth Protocol in June 1998. Despite this progress, U.S. companies complain of regulatory delays. Chilean telecommunications officials indicate that access surcharges for incoming international calls to Chile will be reviewed in the spring of 1999. These charges are discriminatory by reason of their application only to incoming, but not outgoing, international calls.

INVESTMENT BARRIERS

While Chile welcomes foreign investment, controls and restrictions do exist. Under a law that regulates nearly all foreign direct investment, profits may be repatriated immediately, but none of the original capital may be repatriated for one year. Foreign direct investment is subject to pro forma screening by the Government of Chile. Until mid-1998, all funds entering Chile as ordinary foreign capital were subject to a non-interest bearing reserve deposit requirement that significantly raised the financial cost of these capital flows. This reserve requirement, which applied to foreign capital introduced into Chile for most lending purposes, for investment in government securities, and for other so-called non-productive or "speculative" purposes, was reduced from 30 percent to 10 percent in June 1998, and to zero two months later. There is no tax treaty between Chile and the United States, so the profits of U.S. companies are subject to taxation by the governments of both nations.

Royalty contracts must be approved by the Central Bank. Contracts may set fees and royalties only as a percentage of sales. Payments are usually limited to one percent of sales for the use of trademarks, three percent for the use of trade secrets and proprietary processes, and five percent for the use of patents. Remittances above these levels may be denied access to the inter-bank foreign exchange market and may be disallowed as expenses by the tax authorities. In the petroleum sector, oil and gas deposits are reserved for the state. However, private investors, whether foreign or Chilean, are allowed concessions in this area.

Chile has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The measures deal with local content and trade balancing in the automotive industry. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Chile therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

ELECTRONIC COMMERCE

Although electronic commerce is in its infancy in Chile, there is a growing recognition of its vast potential in an economy characterized by an export and services orientation and rapid growth in computer telecommunications and Internet use. There is evidence of a growing consensus between market participants and policy officials that the regulatory treatment of the industry should promote the sector's competitiveness. Similarly, while there is an awareness of the myriad privacy, security, contract law, etc., issues raised by electronic commerce, there is also recognition that the eventual creation of national policies addressing such issues will have to move hand-in-hand with developments internationally.

OTHER BARRIERS

Distilled Spirits Tax

Chile's tax regime historically has imposed higher taxes on distilled spirits imports than on *pisco*, a spirit necessarily manufactured in Chile. The U.S. has consistently indicated its concern regarding the inconsistency of the taxes with Article III:2 of the General Agreement on Tariffs and Trade (GATT). In November 1997 the Chilean Congress passed a bill to modify the liquor tax system. The modification took effect December 1, 1997, with a three-year phase-in period. The amended system still burdens U.S. exports. The European Union instigated the formation of a WTO panel to review this discriminatory practice; the United States is a third party participant to the panel proceeding. A preliminary panel determination was made in February 1999 and the final determination is due in April 1999.

Luxury Tax

In addition to the 10 percent import tariff and the 18 percent value-added tax, automobile imports are subject to additional taxation. An "engine tax," which is scheduled to be phased out in 1999, applies to vehicles with engines of over 1,500 cc. A "luxury tax" of 85 percent is also levied on CIF value above a certain price level (around $10,000 in 1999). These taxes discourage sales of larger, more expensive vehicles, including most U.S.-made automobiles, which usually include expensive safety features. In early 1999, the Government of Chile announced that it would seek to modify -- but not eliminate -- the automobile luxury tax regime.

PEOPLE'S REPUBLIC OF CHINA

The 1998 U.S. trade deficit with China reached $56.9 billion, an increase in the deficit of $7.2 billion from 1997. U.S. exports to China in 1998 totaled $14.3 billion, representing an increase of more than 11 percent from the previous year, making China the 12th largest U.S. export market. U.S. imports increased by $8.6 billion to $71.2 billion in 1998. In 1997, U.S. foreign direct investment (FDI) in China was $5 billion, primarily concentrated in the manufacturing, energy, and financial sectors. U.S. actual and contractual foreign direct investment in China for 1998 stood at USD 3.2 billion and USD 5.1 billion respectively, matching 1997 levels. U.S. FDI in China again has been concentrated largely in the manufacturing and petroleum sectors.

IMPORT POLICIES

China restricts imports through a variety of means, including high tariffs and taxes, non-tariff measures, limitations on which enterprises can import, and other barriers. For example: China has used prohibitively high tariffs -- which in late 1998 still reached over 100 percent on some motor vehicles -- in combination with other import restrictions and foreign exchange controls to protect its domestic industry and restrict imports. These high nominal tariff rates -- to which China adds applicable value-added taxes and, on some goods, consumption taxes -- contribute to inefficiencies in China's economy and pose a major barrier to U.S. commercial opportunities.

While China has generally met the requirements of the 1992 market access memorandum of understanding (MOU) to remove various explicit nontariff barriers, such as quotas and licensing requirements, China still maintains a large number of nontariff administrative controls to implement its trade and industrial policies.

Tariffs and Taxes

Until the mid-1990s, China's tariffs were often high enough to preclude most imports. In 1996, China lowered its average import tariff from 42.1 percent to 23 percent, and on October 1, 1997, further lowered the average import tariff to 17 percent. On January 6, 1999, the Minister of Finance announced that there would be further tariff cuts for 1,014 products in the forestry, textile and toy sectors retroactively effective January 1. Despite these reductions, U.S. industry continues to express concern that tariff rates for sectors in which China is seeking to build its international competitiveness, such as chemicals and motor vehicles, remain extremely high. In the 1996 and 1997 tariff reductions, the largest cuts were reserved for products that are imported in small volumes.

According to China Customs trade data, China's total imports in 1997 decreased 1.23 percent, while imports from the United States increased 4.35 percent. For 1998, total imports dropped to USD 144.4 billion, while imports from the United States as measured by China Customs increased 1.5 percent for the same period.

In addition to high tariff rates, unpredictable application of those rates creates difficulties for companies trying to export to, or import into, the Chinese market. Tariffs may vary for the same product, depending on whether the product is eligible for an exemption from the published NTR tariff. Tariffs may also vary depending on the geographical point of entry. Also, local tariffs may be applied to imports even after the importer paid the national tariff at the port.

High-technology items whose purchase is incorporated into state plans, for instance, have been imported at tariff rates significantly lower than the published NTR rate. China implemented a new import tariff-exemption plan for some goods under revised investment guidelines on January 1, 1998. The Plan is designed to increase investment in high-tech manufacturing by domestic and foreign firms.

China's Customs General Administration (Customs) has also granted preferential tariff rates through special exemptions or more informal means. For example, in notices issued on July 10, 1997, China Customs granted 20 percent import duty rates to two Chinese automobile manufacturers for their imports of certain automobile parts. The Notices cited domestic content exceeding 80 percent in sedans manufactured by the two automobile manufacturers as the basis for granting preferential import duties on parts imported by the two manufacturers. China's 1998 import tariff schedule shows automotive part duties ranging as high as 50 percent on parts from MFN trading partners.

U.S. and other foreign businesses selling goods into China also complain about the lack of uniformity in customs valuation practices. Different ports of entry may charge significantly different duty rates on the same products. Because there is flexibility at the local level in deciding whether to charge the official rate, actual customs duties, like many taxes, are often the result of negotiation between business persons and Chinese Customs officers. Allegations of corruption often result. In August 1998, Customs launched an ambitious program to standardize regulatory enforcement as part of an anti-smuggling campaign. Early reports indicate that the program has reduced the flexibility of local customs offices to 'negotiate' duties but it is too early to measure the permanent effects of the program on customs enforcement.

China has taken steps to reduce tariffs pursuant to its bilateral commitments and to support its WTO accession bid. Many tariff reductions are still under negotiation in the context of WTO discussions with 36 trading partners. U.S. and Chinese negotiators continue to discuss the specific rates to be applied to the many items of export interest to U.S. companies.

In addition to tariffs, imports may also be subject to value-added and other taxes. U.S. industry has complained that the current value-added taxing system (VAT) amounts to an added surcharge on both imported goods and domestic products and discourages consumers by raising prices. China's VAT is usually 13 or 17 percent, and China levies that VAT after first imposing the import tariff and applicable consumption tax and incorporating those amounts into the base on which the VAT is applied. Thus, a product subject to a 17 percent import tariff, a 17 percent VAT, and a consumption tax would be taxed ultimately at a rate in excess of 34 percent. Since some domestic and foreign firms are able to avoid the VAT through negotiation, foreign firms which "play by the rules" are at a competitive disadvantage.

As a means of stimulating the flagging export sector, the state administration of taxation raised VAT rebates three times in 1998. From January 1, rebate rates on textile exports were increased two percentage points to eleven percent. In June, rebate rates for exports of ships, steel, cement and coal were also raised to eleven percent. In August, rebate rates for exports of telecommunications, power generating, agricultural and engineering machinery, automobile parts, bicycles, timepieces, shoes ceramics and lighting equipment were increased from nine to eleven percent, retroactive to July 1. The effectiveness of the rebate program has been offset by operational inefficiencies. Exporters complain that it takes several months to obtain the rebates and amounts are often miscalculated.

On October 1, 1997, China introduced a sliding duty on newsprint for which the United States has been an important supplier. The sliding duty is sensitive to import prices, and as import prices drop, the duty payable increases to as high as 45 percent for newsprint from NTR trading partners. China's previous ad valorem duty rate on newsprint was 15 percent in 1996. It has been the practice for Chinese buyers to purchase large quantities of newsprint on the international spot market when prices are low. Following a petition filed by domestic newsprint producers, however, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), working with the State Economic and Trade Commission (SETC), decided to implement the sliding duty. In addition, in late 1997, China launched an antidumping investigation against Canadian, Korean and U.S. newsprint producers. On July 10, 1998, MOFTEC announced a preliminary determination that newsprint from the three countries had been dumped in China at margins of up to 78.93 percent below domestic prices. On an interim basis, importers of newsprint from the three countries must post cash guarantees equal in value to the margin assessed against it. A final determination on the case is expected to be announced early in 1999.

Nontariff Measures

Nontariff barriers to trade are administered at national and subnational levels by the SETC, the State Planning Commission (SPC), and MOFTEC. China's traditional nontariff barriers include import and export licenses, import quotas, and other import controls. The levels of specific nontariff barriers are the result of complex negotiations between the central government and various ministries, state- owned corporations and trading companies.

Central government agencies determine the levels of import quotas through data collection and negotiating sessions. Officials at central and local levels evaluate the need for -- or quantitative restrictions on -- particular products for individual projects. Once "demand" is determined, central government agencies allocate quotas that are eventually distributed nationwide to end-users and administered by local branches of the central government agencies concerned. China provides little transparency regarding the quantity or value of products to be imported under a quota.

MOFTEC uses import licenses to exercise an additional, nation-wide system of control over some imports. Many products are subject both to quotas and also to import licensing requirements. For these products, after permission has been granted by other designated agencies for importation, MOFTEC must decide whether to issue a license. MOFTEC officials claim that import licenses are issued automatically once other agencies have approved an import.

China has removed over 1,000 quotas and licenses on a wide range of key U.S. exports such as telecommunications digital switching equipment, computers, many agricultural products, and medical equipment. Despite the removal of these quotas and license requirements, required under the 1992 MOU, there are indications that China is erecting new barriers to restrict imports. During 1998, China drafted new pharmaceutical price control regulations which will restrict profit margins on sales of many pharmaceuticals, issued a requirement that new power plants of less than 600mw use no foreign equipment (though government authorities have insisted that this decision originated with the power companies themselves), imposed a ban on the import of diesel and gasoline, and initiated a "buy local" campaign intended to diminish reliance on imports of telecommunications equipment and components. In addition, restrictive trading rights have affected crude oil imports, even though quotas have been removed.

China announced in early 1996 that, effective April 1, 1996, tariff-rate quotas (TRQs) would apply to imports of wheat, corn, rice, soybeans, and vegetable oils. By late 1998, China had still not announced TRQ administration rules or quota volumes, perhaps because this issue is being negotiated as part of its WTO accession. Out-of-quota tariff rates are as high as 121.6 percent. A lack of clarity and information complicates trade in these goods.

On January 1, 1999, China Customs announced that the number of products requiring export licenses had been cut from 707 to 395, a 44 percent reduction. Products still requiring licenses included mostly raw materials, lethal chemicals and food products. Some manufactured goods -- certain kinds of textiles, electric fans, computers, black and white televisions and bicycles -- are also included.

Transparency

The 1992 bilateral market access MOU laid the foundation for China to improve significantly the transparency of its trade regime, including the publication of a central repository for all central government trade regulations and publication in the provinces of all trade and investment-related trade regulations. The MOFTEC gazette was established to carry official texts of all trade-related laws and regulations at the national level. The gazette has contributed significantly towards transparency, but it is sometimes incomplete and not always timely. Moreover, it does not feature laws and regulations from other agencies which can have a significant impact on U.S. firms.

In addition, the Chinese Government has established several web sites (among which www.cei.gov.cn and www.moftec.com.cn are the most significant) in Chinese and English which carry government news and the texts of newly promulgated laws and regulations.

The opaque nature of customs and other government procedures, however, still compromises the important steps taken towards improving transparency in the import approval process, especially for industrial goods.

Trading Rights and Other Restrictions

China restricts the types and numbers of entities that have the legal right to engage in international trade. Only those firms with import trading rights may bring goods into China. In addition, some goods that are of great commercial value to both China and its trading partners, such as grains, cotton, vegetable oils, petroleum and certain related products are imported principally through state trading enterprises.

In some cases, specific bureaus or ministries impose informal market access barriers for imports that fall under their jurisdiction. Some agencies require that only a certain group of companies be allowed to import; end users are sometimes required to obtain purchase certificates before they can receive permission to import.

As a result, China's real demand for these types of imported products greatly exceeds the supply available through the official system. For example, U.S. industry estimates that, prior to the summer 1998 customs crackdown, only five percent or less of imported distilled spirits entered the Chinese market through official channels. Thus a large quasi-illegal "grey market" for products such as spirits, consumer electronics, computer equipment, cigarettes and automobiles grew up around the official system. The growth of the grey market resulted in revenue losses for China due to corruption and smuggling.

In the context of its World Trade Organization accession negotiations, China has pledged to liberalize the availability of trading rights, i.e., the right to import, export and have access to China's distribution system, over a three-year period. At the end of that transition period, all foreign and domestic enterprises will have trading rights. U.S. and third-country firms expect that trading rights liberalization will enable them to deal directly with customers and not be forced to go through intermediary companies that have the right to import goods into China. China's restrictive approach to licensing the scope of a business's operations (defining and limiting the types of goods a company can deal in and operations in which a company may engage in China) will also have to be dealt with to ensure that liberalization of trading rights is meaningful.

Import Substitution Policies

Import substitution has been a longstanding Chinese trade policy. Nonetheless, in the 1992 MOU, China stated that it had eliminated all import substitution regulations, guidance, and policies, and that it would not subject any products to import substitution measures in the future. This constituted a commitment, for example, that a Chinese Government agency would no longer deny permission to import a foreign product because a domestic alternative exists.

Despite this commitment, in late 1998 the Ministry of Information Industries (MII) issued a circular instructing telecom companies to buy components and equipment from domestic sources. Also in 1998, the Chinese Government announced that power generation facilities of 600 mw or smaller could not use imported equipment. Another example was China's 1994 automotive industrial policy that included import substitution requirements. This policy, designed to foster development of a modern automobile industry in China, explicitly called for production of domestic automobiles and automobile parts as substitutes for imports, and establishes local content requirements, which would force the use of domestic products, whether comparable or not in quality or price. China's industrial ministries can have considerable impact on U.S. firms through import substitution policies.

In December 1998, the state council released new pharmaceutical pricing regulations, effective January 1, 1999. The regulations discriminate against imported products. Price formulas vary based on whether domestic substitutes exist and receipt of certain benefits (such as exceptions from limits on profits) has been conditioned upon whether a product replaces an import.

The United States is consulting with China bilaterally and in the context of its WTO accession negotiations on the elimination of these policies and ensuring that future policies do not contain such provisions.

STANDARDS, TESTING, LABELING AND CERTIFICATION

China maintains statutory inspection requirements (conformity assessment procedures) on about 780 imported goods, and an even greater number of items are subject to statutory inspection requirements upon export from China. In addition to these conformity assessment inspections, China also imposes safety licensing requirements on certain products. On January 1, 1999, China imposed mandatory safety inspections for imports of electronic products, including personal computers, monitors, printers, switches, television sets and stereo equipment. This measure further stipulates that as of January 1, 2000, these same products will require an import commodity safety license.

In the context of China's WTO accession negotiations, China has identified over one hundred tariff-line items that are subject to safety licensing requirements. Major problems with China's standards system include the lack of transparency, difficulty in determining the appropriate standards, use of different standards on imports from different countries and different standards from domestic goods, and adoption of unique standards that differ from international standards for no identifiable reason.

China passed the "import and export commodity inspection law" establishing a separate regime for safety inspections of imported goods on February 2, 1989. The first catalog of nine commodities covered by the law was announced on August 1, 1989, with compliance required as of may 1, 1990. A second catalog of commodities covered by the law was announced on August 1, 1995, and contained a list of 38 categories of equipment, the first 20 of which became subject to safety inspection and certification on October 1, 1996. The last 18 of these equipment categories became subject to safety inspection and certification as of October 1, 1997.

As noted, U.S. and other foreign traders often encounter difficulty in learning which Chinese standards apply to their goods. Officials of the state administration entry-exit inspection and quarantine (now under the jurisdiction of the Customs Administration) have said that for some goods for which China has not yet developed its own standards, the standards of the country of origin will apply. Therefore, a particular good from the United States may have to meet a different standard at the Chinese point of entry than does the same good taken from the European Union.

For manufactured goods, China requires that a quality license be issued before the goods can be imported into China. With a few exceptions, China does not accept U.S. certification of product quality or manufacturing procedures. Obtaining quality licenses to export to China can be time-consuming and expensive. While the inspection and licensing requirements vary according to commodity, U.S. industry considers most to be burdensome and contrary to the principles of the WTO Agreement on Technical Barriers to Trade.

The 1992 market access MOU requires that China apply the same standards and testing requirements to nonagricultural products, whether foreign or domestic. The United States and other foreign suppliers have complained, however, that the safety and inspection procedures applied to foreign products are more rigorous than those applied to similar domestically-produced products. Foreign suppliers have also had difficulty in learning exactly how and by whom inspections are conducted. For some types of product inspections, China does not use the same inspection agency for domestic and imported goods.

People's Republic of China

China's phystosanitary and veterinary import quarantine standards are often overly strict, unevenly applied, and not backed up by modern laboratory techniques. An example was China's use of past Mediterranean fruit fly occurences in certain areas as a reason to ban the entry of citrus fruit from all parts of the United States. The Chinese Government also continues to require foreign pesticide producers to submit to costly testing and registration procedures, but does not apply these requirements to domestic producers. U.S. companies report that complying with these regulations costs more than USD 5 million per agriculture chemical.

China committed in the 1992 Market Access MOU to base its agricultural import standards on "sound science." since 1992, China has made some progress on agricultural sanitary and phytosanitary issues, signing bilateral protocols for several agricultural items, including live horses (September 1994); apples from Washington, Oregon and Idaho (April 1995); ostriches, bovine embryos, swine, and cattle (June 1995); cherries from Washington (March 1996) and grapes from California (may 1997). However, China's sanitary and phytosanitary measures still prohibit imports of U.S. citrus, plums, and pacific northwest wheat.

In early 1997, China announced a one-year trial period for imports of meat for the retail market. Under this scheme, China allows meat imports into the general market from selected plants in three countries (Australia, Canada and the United States) during an indefinite 'trial' period which began on June 1, 1997. Only five U.S. plants were approved to export a total of 26,800 MT of beef, pork, turkey and poultry. As of January 1999, no meat had been imported under this project. With a tariff of 45 percent and a VAT of 13 percent, informal importing channels are preferred. Access for meat and poultry from other plants are limited to use in hotels, restaurants and food processing facilities in China. In addition, pork imports face restrictive import licensing requirements: licenses are only issued by the State Administration for Entry-exit Administration and Quarantine (SIQ) in Beijing. The industry estimates that up t USD 400 million worth of U.S. chicken parts made their way to China through Hong Kong in both 1997 and 1998; total U.S. beef, pork and poultry direct exports in China amounted to just over USD 60 million.

GOVERNMENT PROCUREMENT

China's government purchasing actions and decisions are subject to China's general laws, regulations and directives. Despite its commitment under the 1992 Market Access MOU to publish all laws and regulations affecting imports and exports, China has not yet published any laws or regulations regarding its government procurement practices. Although one government entity, the national tendering center for machinery and electrical appliances, published a tendering guide, procurement procedures are unclear and lack transparency.

The State Development and Planning Commission (SDPC) began drafting a national procurement law for China in 1997. The draft law was forwarded to the State Council in late December 1998 and approval is expected in March 1999. Once promulgated, the law will include ten regulations on procurement of goods and services, especially in construction and for the military; scientific research projects; charges for bidding agencies; qualifications for bidding agencies; disputes in procurement procedures; and the establishment and discipline of bid evaluation committees.

Like many countries with developing procurement markets, two types of procurement exist in China:

-- procurement funded by the world bank or other international organizations and

-- procurement funded by the Chinese Government.

For projects using foreign loans provided by international organizations such as the World Bank, a loan condition requires that tendering procedures comply with standards set by the subsidiaries of state-owned trading companies or the state council's national tendering center for machinery and electrical equipment. The Chinese Government seldom uses the same transparent and competitive bidding procedures in procurement it funds. In fact, most of these procurements allow for preferential treatment of domestic suppliers' goods and services. Even when procurements are open to foreign bidders, such suppliers may be discouraged from bidding by the uncertainty of obtaining foreign exchange. Moreover, the Chinese Government routinely seeks to obtain offsets from foreign bidders in the form of local content requirements, technology transfers, investment requirements, counter-trade or other concessions, not required of Chinese firms. In fact, bidding documents, including those for internationally-funded procurement, often express a "preference" for offsets.

The problem of official corruption remains widespread as the government continues to call for improved self-discipline and anticorruption efforts at all levels. (Premier Zhu Rongji, in particular, has held the senior leadership charge against corrupt practices.) For procurement contracts decided according to competitive procedures, there is little direct evidence that corrupt practices have influenced awards or result in failure to enforce competitive measures. However, competitive procedures are not followed for the bulk of procurement in China. U.S. suppliers complain that bribery and corruption in China puts them at a competitive disadvantage. While this dilemma is less severe in sectors where the united states holds clear technological preeminence or cost advantages, it does undermine the long-term competitiveness of U.S. suppliers in the Chinese market.

The growth of the Chinese economy, the proportion of the economy still managed by the State, and the demand for the type of high technology goods and services that the United States provides all suggest that government procurement contracts would offer significant commercial opportunities if current restrictions and non-transparent practices were removed. Sectors of highest demand include infrastructure development (especially energy, petrochemicals, transportation and environmental protection), telecommunications and value-added services, machinery, electrical equipment and precision instruments, and certain agricultural and forest products.

EXPORT SUBSIDIES

The Chinese Government claims that direct financial subsidies on all exports including agricultural goods ended on January 1, 1991. While this may be true for direct budgetary outlays, China continues to use a variety of measures to support and promote exports. For example, Chinese exporters allegedly benefit from preferential loan policies (e.g., access to funds on non-commercial terms), preferential tax policies (e.g. reduced income taxes), and preferential energy and raw material supply policies (e.g., access to freight services and input supplies on non-commercial terms).

In December 1998, the People's Insurance Company of China (PICC) announced that it would raise the ceiling on export insurance for many countries that import Chinese commodities. MOFTEC is discussing a proposal to contribute export funds to PICC to cover part of the program, enabling the PICC to slash its fees. In addition, the export and import bank of China in late December contracted to provide the Shanghai Machinery Export and Import Co. Ltd. With export credits worth USD 180.72 million over three years. The contract will give strong support to China's exports of machinery and electronic products.

The government also generates exports by imposing export requirements on Chinese foreign trade corporations (FTCs) and foreign-invested enterprises. These requirements tend to make FTCs over export, resulting in systematic financial losses. These losses are often covered by state commercial bank loans; the chronic nature of these losses strongly suggests that much of the lending is not on strictly commercial terms. State companies are also subject to constraints that make them export in volumes not consistent with their import costs or other commercial considerations.

China is attempting to bring a greater degree of uniformity in the type and amount of taxes and duties imposed on enterprises in China, domestic and foreign- funded alike. As a result, preferential tax and duty policies that benefit exporters in special economic zones and coastal cities are being revised. It remains to be seen, however, whether uniformity will be achieved, particularly with respect to income and other direct taxes imposed on exporters.

China's recent corn exports (over 4 million metric tons in 1998) demonstrate clearly the continued willingness of parts of the Chinese Government to export. Most of China's 1998 corn exports were sold at prices USD 25 to USD 45 per metric ton below domestic wholesale corn prices. In the context of negotiations on its accession to the WTO, however, China has agreed not to use export subsidies for agricultural products. Reaching an understanding on what practices constitute subsidization is key to the value of this commitment

LACK OF INTELLECTUAL PROPERTY PROTECTION

Based on the 1995 and 1996 bilateral IPR agreements and extensive follow-up work with Chinese officials, China now has a functioning system to protect intellectual property rights (IPR). Enforcement of intellectual property rights has become part of China's nationwide anti-crime campaign; the Chinese police and court system have become actively involved in combating IPR piracy. According to Chinese Government statistics, China seized some 35 million illegal audio-visual products from 1994 to year-end 1998. It has shut down or fined 74 assembly operations for pirated VCDS and seized over 20 million smuggled VCDs during the same period.

Regional cooperation on enforcement of IPR at the border has also increased. However, as China has closed down illegal production lines and prevented importation of additional lines, the number of production lines and the manufacture of infringing product in Hong Kong and Macau have increased. We have urged Customs authorities throughout the region to work together to stop the flow of infringing product and machinery across borders.

Training on IPR enforcement has been a key part of building the necessary infrastructure for continuing enforcement efforts. More than 3,000 judges in China have received training on IPR laws and the subject is now taught at several major universities, including Beijing University, Harbin Engineering University and Shanghai's Fudan University. U.S. Government agencies and industry groups have provided specialized IPR training and technical assistance to Chinese Government personnel pursuant to the 1995 agreement.

The PRC Government reorganization in March 1998 abolished the State Science and Technology Commission's IPR Working Group Executive Conference, the U.S. Government's main counterpart in U.S.-China IPR negotiations. The State Intellectual Property Office (SIPO) was established on April 1, 1998 to coordinate IPR protection efforts and to take over the functions of the executive conference. MOFTEC remains a key interlocutor on the trade-related aspects of IPR.

Although China has revised its laws to provide criminal penalties for IPR violations, the U.S. remains concerned that penalties imposed by PRC courts do not act as a deterrent. Industry sources point out that unauthorized optical disks are still widely sold in China and urge better IPR enforcement at a retail level.

End-user piracy of computer software, especially the sensitive issue of piracy within PRC Government ministries, costs U.S. companies millions of dollars each year. The lack of agents in China authorized to accept trademark applications from foreign companies makes it difficult for foreigners to register trademarks. Regulations on the use of copyright agents by foreign companies have not yet been finalized; this effectively inhibits foreign companies from using agents to license copyrights. The lack of clear procedures to protect well-known trademarks makes it extremely difficult to oppose or cancel well-known marks registered by another party.

U.S. industry estimates of intellectual property losses in China due to counterfeiting, piracy, and exports to third countries have exceeded USD 2 billion. Some U.S. companies estimate losses from counterfeiting account for 15 to 20 percent of total sales in China. One U.S. consumer products company estimates that it loses USD 150 million annually due to counterfeiting, a growing problem, in China. The destructive effect of counterfeiting has discouraged additional direct foreign investment and threatened the long-term viability of some U.S. business operations in China. The inferior quality of counterfeit products also creates serious health and safety risks for consumers.

SERVICES BARRIERS

Restrictive investment laws, lack of transparency in administrative procedures and arbitrary application of regulations and laws severely limit U.S. service exports and investment in China, especially in the financial services, telecommunications, audiovisual, distribution, professional services and travel and tourism sectors.

In most sectors, foreign service providers are only allowed to operate under selective "experimental" licenses. Strict operational requirements mandate limits on the forms of establishment for entry and restrictions on the geographic scope of activities. Once in the market, the lack of transparency and sometimes discretionary application of Chinese laws and regulations, along with the denial of national treatment, make doing business difficult for most foreign service companies.

Hiring issues are also complicated. Although many U.S. companies, such as those involved in joint-ventures, are allowed to hire and fire based on demand and performance and can pay wages according to market rates, the representative offices of U.S. service suppliers are still required to hire, recruit or register all local staff through state labor service companies which collect large monthly fees for each employee hired. In some services sectors, particularly professional services, there are strict limits on the hiring of Chinese professionals. Expatriate staff are also subject to strict limitations on their activities.

In line with its efforts to join the WTO, China has begun to allow greater foreign participation in a few services industries on a 'trial' basis. For example, the state council has followed up on plans announced in January 1996 to allow foreign banks in Shanghai's Pudong area to conduct local currency transactions on a restricted trial basis. To date, nine foreign banks have obtained permission to conduct local currency business in Pudong.

U.S. and other foreign financial institutions, however, still need approval -- granted on a discretionary, case-by-case basis -- for new representative offices and branches. By the end of 1998, China approved a total of 151 bank branches, seven joint-venture banks, and five wholly foreign-owned banking firms in 19 cities. The scope of activities for these banks and branches is limited almost exclusively to business denominated in foreign currencies, essentially carving out the entire domestic market and leaving only international trade- related business for foreign financial institutions. Steps by the PRC to crack down on unauthorized foreign exchange transactions in late 1998 have resulted in disruption of the operations of foreign banks and importers in China. Evidence of unauthorized capital outflows prompted the government to tighten documentation requirements, causing payment delays and increased transaction costs.

With respect to insurance services, China passed a new insurance law in 1993 and is taking steps to reform the domestic industry. In 1998, the Chinese Government created the Chinese Insurance Regulatory Commission (CIRC) to help facilitate the development of the industry in China. At present foreign insurers are, with one exception, only permitted to operate in Shanghai. Despite this restriction, by the end of 1998 over 100 foreign firms, including 23 from the U.S., had applied for permission to open branch offices in Shanghai. To date, only two U.S. firms have been allowed to operate in China. The licenses granted to foreign companies restrict each company to a narrow range of operations. Permission to compete directly with the state-run insurance company, the people's insurance company, or with other quasi-private Chinese companies such as Ping an or China Pacific, has not been granted.

In telecommunications services, U.S. companies continue to face investment barriers. Current regulations governing providers of basic and value-added telecommunications services limit the management or ownership of these types of services to domestic companies. Disturbingly, in August of 1998, the Ministry of Information Industries (MII) moved to restrict the nature and scope of foreign participation in China's telecom services market. Officials called for an end to the Chinese-Chinese-Foreign (CCF) joint venture formula that had been the only apparently legally acceptable means (though not officially sanctioned by regulation) of foreign participation in China's telecom services market. A final decision on how to deal with existing operations is still pending. Currently China Unicom has more than 40 joint venture arrangements with foreign companies. Uncertainty surrounding the future of these arrangements has effectively halted foreign investment in telecom services.

Information services also remain a difficult and sensitive area for U.S. firms in China. In April 1996, for example, the State Council announced plans to apply severely restrictive regulations governing the activities of foreign information providers. U.S. efforts in 1997, however, resulted in Chinese assurances that appear, for now, to have addressed the concerns of financial information providers and allowed their continued operation.

Audiovisual services is another sensitive area where participation by foreign firms is highly restricted, in part because of Chinese concerns about politically sensitive materials entering China. The websites of foreign news organizations are routinely blocked and news service providers remain wary that new restrictions could be imposed on their activities. Distribution of sound recordings, videos, movies, book and magazines is highly restricted. Inconsistent and subjective application of censorship regulations act as a further impediment to foreign participation in the market.

In 1998, U.S. companies involved in direct sales had their operations temporarily shut down as a result of a Chinese Government crack down on pyramid schemes. After the issue was raised by the United States, the companies were allowed to reopen but under restrictions that effectively change their business to traditional retailing. Here, as elsewhere in the retailing sector, geographic and quantitative limits on the number of services suppliers prevent firms from competing effectively against local retailers. Restrictions on the ability of foreign firms to set product prices, quantity, import composition, and quality undercut any competitive advantages foreign firms might bring to the market. Foreign retailers are also only allowed to sell the products of their parent company and cannot engage in the sale of domestic goods.

In the distribution services sector, U.S. companies are again significantly restricted in the scope of their activities. Business licenses often do not allow firms to provide the full range of services, including marketing, maintenance, after-sales services and customer support, except in collaboration with a Chinese partner. Foreign firms are not given the right to own and manage distribution networks, wholesaling outlets, or warehouses. Foreign firms do not have access to transportation services on a reasonable and nondiscriminatory basis and are required to use state- owned companies to distribute their goods.

In professional services, U.S. engineers and architects have enjoyed a relatively more cooperative and open relationship with the Chinese Government. These professions have operated in the Chinese market through joint venture operations with relatively few regulatory problems. Foreign law firms and accounting firms, on the other hand, have been more tightly regulated.

China has permitted the establishment of foreign law firms in designated cities on a case-by-case basis only. As of February 1998, China had licensed 93 foreign law firms, of which almost 30 were U.S. firms, in 15 cities. China limits a firm's practice to a single city and foreign attorneys are not permitted to employ Chinese lawyers or establish partnerships or form other types of associations with Chinese lawyers or law firms.

Accounting services are almost as restricted. In accounting, China limits the scope of activities for representative offices to consultancy. In addition, China is imposing forced localization. For example, foreign partners in accounting firms must gradually reduce their equity share to 33 percent by 2001.

Finally, travel and other tourist-related services are under tight regulation. Activities of foreign firms are limited to 11 areas in China. Current Chinese law prohibits non-Chinese companies from establishing full service travel agencies in China. China also imposes numerous restrictions on the guides and tourist agents that can be hired.

INVESTMENT BARRIERS

Although official Chinese policy views foreign investment as critical to the country's economic development plans, the Chinese Government continues to maintain barriers and controls on foreign investment, channeling it toward areas that support Chinese Government development policies. China encourages foreign investment in priority infrastructure sectors such as energy production, communications, agriculture, forestry, environmental protection and transportation, and restricts or prohibits it in sectors where China's planners have not determined that China has a specific need or where China wants to protect a domestic industry.

China issued new foreign investment guidelines, effective January 1, 1998, and provided a revised list of sectors, in which foreign investment is encouraged, restricted or prohibited. According to the investment guidelines, the Chinese Government still prohibits foreign investment for projects with objectives not in line with the State Plan. In addition, there are many areas in which foreign investment is technically allowed but severely restricted. Restricted categories generally reflect:

-- the protection of domestic industries, such as the services sector, in which China fears its domestic market would quickly be dominated by foreign firms;

-- the goal of limiting luxuries or requiring large imports of components or raw materials; and

-- the avoidance of redundancy (i.e. excess capacity).

China has also reinstated tariff and VAT exemptions for imports of capital equipment by selected foreign-invested and domestic projects. These changes are in response to two years of decline in the number of new foreign investment projects and the value of such projects.

Examples of investment restrictions are abundant. For example, China bans investment in the management and operation of basic telecommunications, all aspects of value-added telecommunications as well as in the news media, broadcast and television sectors -- citing "national security interest." In addition, China severely restricts investment in the rest of the services sector, including distribution, trade, construction, tourism and travel services, shipping, advertising, insurance and education. Foreign firms are forced into joint venture arrangements in which they are often required to sell down to minority positions over a specified time period. Finally, China hinders foreign investment and distorts trade by insisting on fulfillment of contract-specific local content and mandatory transfer requirements if companies are to import under anything other than prohibitive tariff rates.

Once in the market, foreign ventures face numerous problems because of the uncertain investment climate created by policy vacillations and the uneven implementation of laws and regulations. China has taken steps to address investors' complaints regarding the inadequacies of protection for foreign investment, such as amending its joint venture law to prohibit the expropriation or nationalization of joint ventures without cause and compensation. While this action is a step in the right direction, the law continues to fall short of international standards sought by the United States. Other legislative actions have promised greater autonomy and incentives for foreign- invested ventures, but these laws have been haphazardly enforced, if at all.

In addition, the designation of key state enterprises in many industries as the exclusive basis for the development of critical technologies limits the choice of joint venture partners. Designated partners are frequently unattractive for various business reasons such as lack of experience, inappropriate staffing levels, and outdated equipment.

While foreign-invested enterprises may have a significantly greater degree of managerial autonomy, Chinese enterprises enjoy certain advantages because they are fully integrated into the national economic system. Unlike many U.S. companies in China, Chinese companies have free access to the Chinese domestic market.

For many companies, the highly personalized nature of business in China and the limited number of suppliers and customers often make arbitration or other legal remedies impractical. Even when they have strong cases, foreign investors often decide against using arbitration or other legal means to resolve problems out of concern of permanently alienating critical business associates or government authorities. The lack of recourse to an impartial legal system that is not susceptible to government pressure further undermines investor confidence.

In December 1992, the United States reestablished the Joint Commission on Commerce and Trade (JCCT) as a ministerial-level forum for discussion of investor and business concerns, among other things. The JCCT met most recently in December 1998 with working group sessions on trade and investment in a number of sectors. These working groups have established and continue to coordinate a range of cooperative exchanges on trade and investment issues, providing a forum to discuss specific investor and business problems.

ANTICOMPETITIVE PRACTICES

Anticompetitive practices in China come in the form of industrial conglomerates created to improve the profitability of state-owned enterprises. In some cases, the government has provided subsidies and other public benefits to such conglomerates. Some are even authorized to fix prices, allocate contracts and, in other ways, restrict competition among domestic suppliers. Such monopolistic or monopsonisitic practices may restrict market access for imported products, raise production costs, and restrict market opportunities for foreign-invested enterprises in China.

ELECTRONIC COMMERCE

At present sales and contracts executed through electronic commerce are not regulated under Chinese law. While officials in related Chinese organizations are aware of the potential of e-commerce to promote exports and increase the international competitiveness of Chinese firms they favor increased regulation of the medium. This is partially due to the insufficiency of China's information infrastructure, and in part to the Chinese Government's desire to control and monitor information exchanges between its citizens and those of other countries. The lack of a comprehensive legal framework for e-commerce and problems with security pose a significant challenge to the development of e-commerce in China.

In 1996, the Chinese Government established the China international electronic commerce center (CIECC). A division of MOFTEC, CIECC provides various e-commerce services to Chinese enterprises and institutions in order promote foreign trade. However, due to an underdeveloped Internet infrastructure, a low subscriber base, and difficulties with credit and credit cards, the more rigid Electronic Data Interchange

(EDI) based electronic commerce remains the dominant format in China. EDI essentially functions like a club, with member firms paying fees to use the standardized forms and dedicated networks that manage e-commerce transactions. It is much easier to control than its Internet counterparts.

In mid-1998, MOFTEC officials reported that guidelines for e-commerce in China are under development; little information is available about their proposed content. Key issues to be resolved include security for electronic payment systems, liability and user authentication.

OTHER BARRIERS

Legal framework: the lack of a clear consistent framework of laws and regulations is also a major barrier to U.S. firms. Although China is moving toward a commercial rule of law, many gaps exist. Even where laws and regulations have been published, they are often unclear and leave too much room for discretion -- either through honest misunderstanding or corrupt implementation -- or for being ignored outright. U.S. firms have found it difficult to collect awards made by Chinese courts against powerful Chinese companies. Local courts and officials have also taken illegal actions against U.S. firms and the injured parties have found it difficult, if not impossible, to obtain redress from the Chinese courts.

COLOMBIA

In 1998, the U.S. trade surplus with Colombia was $165 million, a decrease of $309 million from the 1997 figure. U.S. merchandise exports to Colombia were $4.8 billion, a decrease of $382 million from the 1997 level. Colombia was the United States' twenty-seventh largest export market in 1996. U.S. imports from Colombia were $4.7 billion in 1998, a decrease of $73 million compared to 1997.

U.S. foreign direct investment in Colombia amounted to $3.7 billion in 1997, and was concentrated largely in the petroleum, manufacturing, and financial sectors. The December 1998 fiscal reform exempted foreign investors from the existing seven percent remittance tax, on condition that profits are reinvested in the country for a period of five years or more.

IMPORT POLICIES

Tariffs

Colombia has bound its tariffs in the WTO at 30 percent for petrochemical products, 35 percent for a broad variety of industrial products, and 40 percent for textiles and apparel, footwear and other leather items, clothing, autos, and other products. Colombia, along with Venezuela and Ecuador, implemented an Andean Community Common External Tariff (CET), which took effect on February 1, 1995. The CET has different applied duty levels of 0, 5, 10, 15 and 20 percent for most non-agricultural products. Each of the three countries has taken some exceptions from the CET. Currently the average CET is 14 percent.

For agricultural products, Colombia maintained tariff rate bindings of 16, 15, and 20 percent for peas, lentils and apples respectively. For products subject to the Andean price-band system, tariff rates are calculated based on domestic and international prices, and often result in artificially high, prohibitive tariff rates. The tariff rate for the rest of agricultural products was bound at 100 percent in 1995, with the commitment to reduce it to 70 percent by the year 2004.

Colombia also adopted a harmonized automotive policy with Venezuela and Ecuador - which went into effect on January 1, 1995 - establishing CET rates of 35 percent for passenger vehicles, 15 percent for mass transit and cargo vehicles, and 3 percent for kits. The policy includes regional content requirements.

In recent years Colombia has negotiated trade arrangements with other Latin American and Caribbean countries. For instance, Colombia has a comprehensive free trade agreement with Mexico and Venezuela, known as the G-3 Agreement, which took effect on January 1, 1995 and under which most tariffs are to be reduced to zero by the year 2007 (special treatment was given to agricultural, agro-industrial, and automotive sectors). Colombia also has a partial free trade agreement with Chile, which entered into force in January 1994 and provided for the elimination of all bilateral tariff and non-tariff barriers over a five-year term. Colombia, along with the other members of the Andean Community, has entered into negotiations for a free trade agreement with the countries of MERCOSUR.

Colombia's Tax Law, Law 223, which took effect on January 1, 1996, subjected all distilled spirits to a value-added tax of 35 percent. However, the law makes an exception for whiskeys aged 12 or more years, which are subject to a 20 percent value-added tax. Bourbon and Tennessee Whiskey -- both distinctive products for the United States -- are typically aged from four to eight years and, as a consequence, face a higher tax rate than most competing imported whiskeys which are aged longer. This distinction between whiskeys creates a competitive disadvantage for Bourbon and Tennessee Whiskey. The United States has protested this discrimination but the Government of Colombia has failed to eliminate it.

Colombia requires import licenses for less than two percent of products, primarily weapons and other products related to defense, as well as "precursor" chemicals that may be used in refining cocaine. The majority of used goods, used cars, remanufactured auto parts, tires and clothing - are prohibited from import, and those that are allowed, such as machinery, are subject to licensing.

The agriculture sector in Colombia remains protected. Since the promulgation of Decree 2439 in November 1994, the Ministry of Agriculture has been required to approve import licenses for many agricultural items, such as wheat, poultry meat, malting barley, corn, cotton, rice, sorghum, wheat flour, oil seeds and their products (e.g., soybeans, soybean meal, and soybean oil). Colombia has implemented absorption agreements which require an importer to purchase a government-specified quantity of domestically produced goods as a precondition for the granting of import licenses. If the import licensing requirement for the products indicated above were eliminated, estimated U.S. annual exports could increase by up to $10 million.

Fourteen basic agricultural commodities (powdered milk, wheat, malting barley, yellow and white corn, crude palm and soybean oils, white rice, soybeans, white and raw sugars, chicken and turkey pieces and pork meat), and an additional 120 commodities considered substitutes or related products, are subject to a variable import tariff "price band" system. Imported wheat is also subject to minimum import prices.

The Colombian Foreign Trade Institute (INCOMEX) requires approval by the Ministry of Agriculture (MAG) prior to the importation of chicken and turkey, whole birds or parts. Under this system, the Government of Colombia has approved import licenses only when it has determined such imports will not adversely affect Colombian producers. Since 1994, import licenses for U.S. chicken and turkey parts have been regularly denied, and licenses for whole birds are often delayed. If the import licensing requirement for chicken and turkey parts were eliminated, it is estimated that U.S. annual exports would increase by approximately $10 million.

Valuation of imported merchandise, previously the responsibility of the customs service, can now ostensibly be done by importers who self-value, assess, and pay duties and other taxes at commercial banks. Customs clearance processes in many instances can be performed fairly rapidly. However, Colombia's pre-shipment inspection of imported equipment must be performed by one of several independent testing agencies which, according to U.S. industry, results in unnecessary delays. Through a series of resolutions dating back to November 1994, the Colombian Government has created a pre-shipment inspection (PSI) mechanism using private PSI companies. Colombia allows PSI companies to perform certain direct functions under the control of the national tax and customs directorate (DIAN). As of February 1, 1996, PSI companies began mandatory preclearance of all goods defined as "sensitive" by the Colombian Government. Inconsistencies on the part of customs in adhering to standardized procedures, and lack of transparency in enforcement, continue to create delays and problems. Procedures vary depending on the port of departure and arrival of the merchandise, and rules and regulations are often contradictory. Colombian Customs presented, in December 1998, a project to apply more efficient procedures through a "unique sanction regime"; however, improvements are yet to be observed.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Colombian Institute of Technical Standards (ICONTEC), a private non-profit organization, is also responsible for technical standards' development, provides quality certification and technical support services, and serves as an Underwriters' Laboratories (UL) inspection center. ICONTEC is a member of the International Standards Organization (ISO) and the International Electrotechnical Commission (IEC). According to U.S. industry, Colombian requirements for phytosanitary registrations to bring new products into the market take an excessively long time, six to eight months, to fulfill.

GOVERNMENT PROCUREMENT

The Government Procurement and Contracting Law, Law 8C/93, sought to establish simpler and more transparent procedures based on the principles of economy, transparency and objective selection. It provides equal treatment to foreign companies on a reciprocal basis and eliminates the 20 percent surcharge previously added to foreign bids. It also eliminated unnecessary requirements and bureaucratic procedures that increased prices of public services and limited their availability. The law also settled procedures for the selection of suppliers, mainly through public tenders and in exceptional cases through direct contacts. In implementing Law 80, the Government of Colombia instituted a requirement that companies without local headquarters must certify reciprocity in government procurement in the home country. Law 80 does not apply to contracts for the exploration and exploitation of renewable or non-renewable natural resources, their commercialization, and those activities performed by state companies involved in these sectors. Colombia is not a signatory of the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

As a result of "apertura" and commitments made by the Government of Colombia to the U.S. Government in the context of acceding to the GATT Subsidies Code, Colombia agreed to phase out any export subsidies inconsistent with that Code. This process will continue under the WTO Agreement on Subsidies and Countervailing Measures. For instance, Colombia has notified the WTO of its "special machinery import-export system" and "free zones" as constituting export subsidies. Also, Colombia's tax rebate certificate program (CERT) contains a subsidy component which the Government of Colombia has stated it will replace with an equitable drawback system, but has not yet done so.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Colombia does not yet provide adequate and effective intellectual property protection. As a result of its laws and practices -- especially its inadequate IPR enforcement -- Colombia has been on the "Watch List" under the Special 301 provision of the 1988 Trade Act every year since 1991, and was the subject of an out-of-cycle review at the close of 1998. Colombia has ratified, but not yet fully implemented, the provisions of the WTO Agreement on Trade-related aspects of Intellectual Property Rights (TRIPs).

A recent report by the Ministry of Foreign Trade outlines Colombia's efforts on the subject, including an update of Decision 344 of the Andean Community, which strengthens the rights of patent owners, regulates issues related to profitability models, industrial designs and industrial secrets, and broadens protection to notorious trademarks. Notwithstanding the above, a new update of Decision 344 should focus on integrated circuits, anti-competitive practices, and measures of compliance.

Pirate TV signals are a particular problem for U.S. film and TV interests in Colombia. Many applications to render subscription TV services were submitted and are being studied by the quasi-independent Colombian National TV Commission (CNTV), which expects to formalize this type of service, granting strict control over copyright payments. However, the whole process was canceled in November 1998, without a satisfactory explanation.

Patents and Trademarks

Two Andean Community decisions on the protection of patents and trademarks and of plant varieties have been in effect in Colombia since January 1, 1994. The decisions are comprehensive and offer a significant improvement over previous standards on protection of intellectual property in the Andean Community Countries. For example, they provide a 20- year term of protection for patents and reversal of the burden of proof in cases of alleged process patent infringement. The provisions of the decisions covering protection of trade secrets and new plant varieties are generally consistent with world-class standards for protecting intellectual property rights. However, the decisions still contain deficiencies, including overly broad compulsory licensing provisions, working requirements, restrictions on biotechnology inventions, denial of pharmaceutical patent protection for patented products listed on the World Health Organization's model list of essential drugs, lack of transitional ("pipeline") protection, and lack of protection against parallel imports. In June, 1996, Colombia ratified the Paris Convention for the Protection of Industrial Property, which went into effect in September 1996.

Colombian trademark protection requires registration and use of a trademark in Colombia. In a recent decree, Colombia announced that registration of a trademark must be accompanied with its use in order to prevent parallel imports. Trademark registrations have a ten-year duration and may be renewed for successive ten-year periods. Priority rights are granted to the first application for a trademark in another Andean Community Country or in any country which grants reciprocal rights. Colombia is a member of the Inter-American Convention for Trademark and Commercial Protection. Enforcement in the trademark area remains weak and the backlog of pending cases with the agency in charge of patents and trademarks -- the Superintendency of Industry and Commerce -- stands at approximately 27,000 cases.

Copyrights

Andean Community Decision 351 on the protection of copyrights has been in effect in Colombia since January 1, 1994. Colombia also has a modern copyright law: Law 44 of 1993. The law extends protection for computer software to 50 years, but does not classify it as a literary work. Law 44 and Colombia's civil code include some provisions for IPR enforcement and have been used to combat infringement and protect rights.

Colombia

Colombia belongs to both the Berne and the Universal Copyright Conventions. Decision 351 provides a generally Berne-consistent system. Semiconductor layout designs are not protected under Colombian law.

Colombia's 1993 Copyright Law significantly increased penalties for copyright infringement, specifically empowering the attorney general's office to combat piracy. Also, Colombia's Television Broadcast Law potentially increases protection for all copyrighted programming by regulating satellite dishes. However, enforcement of copyright laws is still quite lacking and U.S. industry estimates that the majority of the videocassette, sound recording, and business software markets are pirated. Music piracy in particular has worsened in the last year, with counterfeit CDS flooding the market despite stepped up enforcement efforts by Colombian customs at points of entry.

Colombia's recent efforts against copyright infringement include a legal reform project, submitted by the attorney general to Congress, which includes a chapter of penalties for transgressions against copyright laws. The chapter includes incarceration for violations against patrimonial copyrights and fines for those who violate the protection mechanisms for patrimonial rights. The project is currently making its way through Congress. Another important project was submitted as part of the tax reform approved by the Colombian Congress, where the Colombian Tax and Customs Directorate (DIAN) is to be provided with police assistance to improve import controls and actions against pirate merchandise entering Colombian borders.

SERVICES BARRIERS

Under the G-3 Agreement, Colombia committed to progressively liberalize trade in services, based on the principles of national treatment, most favored nation, and not requiring a local presence. Since implementation of the General Agreement of Trade in Services (GATS), Colombia committed itself to not raise the level of certain administrative requirements that apply to foreign providers in the sectors of finance, tourism, law, accounting, information technology, mining, telecommunications, construction and engineering. However, no significant deregulation has taken place, and Colombia maintains barriers in a number of service areas including audiovisual, data processing and professional services. In some industries, percentage limits are placed on foreign equity participation. In addition, a minimum of 50 percent of any television commercial for public broadcast network programming must be produced locally. In any case, the mechanism to liberalize in services is one of strict reciprocity.

Cargo reserve requirements in transport have been eliminated. However, the Ministry of Foreign Trade reserves the right to impose restrictions on foreign vessels of nations which impose reserve requirements on Colombian vessels.

Foreign law firms are not permitted to have a commercial presence in Colombia unless the firm is headed by a Colombian attorney. Colombia also restricts the movement of personnel in several professional areas, such as architecture, engineering, law and construction. For firms with more than ten employees no more than ten percent of the general workforce and 20 percent of the specialists can be foreign nationals.

Financial Services

Colombia

In 1991 Colombia promulgated Resolution 51, which permits 100 percent foreign ownership in financial services, although the use of foreign personnel in the financial services sector remains limited to administrators, legal representatives, and technicians.

Colombia denies market access to foreign marine insurers. Colombia requires a commercial presence to sell all other insurance except international travel or reinsurance. Colombia permits 100 percent foreign ownership of insurance subsidiaries, but the establishment of branch offices of foreign insurance companies is not allowed.

In March 1997, the Colombian Central Bank created a reserve requirement on all foreign loans over six months designed to reduce the amount of foreign private debt. Thirty percent of all proceeds from foreign loans were to be left on deposit with the Central Bank in a non-interest bearing account for 18 months. The deposit requirement was reduced to 25 percent in February 1998, when the foreign exchange rate threatened to exceed the top of the band, and was again reduced to ten percent in September 1998, as a means to increase liquidity, lower interest rates and reduce pressures on the dollar price. Certain loans, such as those for certain raw materials and capital goods, are exempt from this requirement.

Basic Telecommunications Services

In the WTO negotiations on basic telecommunications services, Colombia made quite liberal commitments on most basic telecommunications services and adopted the WTO reference paper. However, Colombia specifically prohibited "callback" services and excluded fixed and mobile satellite systems. Currently foreign investment is allowed in telecommunications firms but, under the WTO agreement, Colombia reserves the right to limit foreign investment in these firms based on an economic needs test. While Colombia has allowed new competitors into long distance and international services, high license fees are a significant barrier. Colombia did not sign onto the WTO Information Technology Agreement.

INVESTMENT BARRIERS

Under the Andean Community Common Automotive Policy, Colombia, Venezuela and Ecuador impose local content requirements in order to qualify for reduced duties on imports. The local content requirement for passenger vehicles was 32 percent in 1997 and has risen to 33 percent for 1998. This automotive policy is inconsistent with Colombia's WTO obligations under Trade Related Investment Measures (TRIMs) and must be eliminated before January 1, 2000.

Investment screening has been largely eliminated, and the mechanisms that still exist are generally routine and non-discriminatory. Legislation grants national treatment to foreign direct investors and permits complete foreign ownership in virtually all sectors of the Colombian economy. However, since 1994, in an effort to curb money laundering, the Colombian Government has prohibited foreign direct investors from obtaining ownership in real estate not connected with other investment activities.

All foreign investment in petroleum exploration and development in Colombia must be carried out under an association contract between the foreign investor and Ecopetrol, the state oil company. The terms of the standard association contract were modified in 1994, 1995, 1997 and again in 1998, in an effort to continue to attract foreign investment. Some of the more important changes made were expanding the time periods of exploration and exploitation, the reimbursement of exploration costs on successful discoveries, a more profitable division of production using the "R factor" concept, and the auctioning of oil fields in general. However, security conditions continue to be worrisome, and notwithstanding the improvements in the terms of the contracts, foreign investors will probably continue to remain cautious.

ELECTRONIC COMMERCE

There are no known restrictions affecting electronic commerce in Colombia.

OTHER BARRIERS

Colombia recently liberalized prices for most pharmaceutical products which were previously subject to price controls. However, pharmaceuticals with "active principal" ingredients that have three or fewer local suppliers are still subject to price controls. In 1998, the government authorized a 14 percent price increase on those products still subject to price controls.

Television Local Content Quotas

As part of the de-monopolization of Colombia's government-owned television network, Colombia passed the Television Broadcast Law, Law 182/95, effective January 1995, which increased protection for all copyrighted programming by regulating satellite dishes and permitting private television broadcasters to compete with the government-owned broadcaster. The law permits foreign direct investment in the Colombian Motion Picture Industry, but limits foreign investment to fifteen percent of the total capital of local television programming production companies. The law increased restrictions on foreign content in broadcasting, and imposed a complicated burdensome system of sub-quotas for different hours of the day. The law requires broadcasters to transmit 70 percent locally-produced programming during prime time and a range of zero to 40 percent during other times on national television, and 50 percent locally-produced programming on regional channels and local stations. Retransmissions of local productions are calculated to fulfill only part of the national content requirement. Foreign talent may be used in locally produced programming, but limits are set by the quasi-independent National Television Commission.

Law 182/95 also includes burdensome restrictions on foreign investment, mandating reciprocity requirements and requirements that foreign investors be engaged actively in television operations in their country of origin. Foreign investment also must involve an implicit transfer of technology. The Television Commission has the authority to reduce these restrictions, but has not taken action in this area.

COSTA RICA

In 1998, the U.S. trade deficit with Costa Rica was $446 million, an increase of $146 million from 1997. U.S. merchandise exports to Costa Rica were $2.3 billion, an increase of $275 million (13.6 percent) over 1997. Costa Rica was the United States' 39th largest export market in 1998. U.S. imports from Costa Rica were $2.75 billion in 1997, an increase of $423 million (18.2 percent) from the level of imports in 1997.

The stock of U.S. foreign direct investment (FDI) in Costa Rica in 1997 was $1.6 billion, an increase of 23.1 percent from the level of U.S. FDI in 1996. U.S. FDI in Costa Rica is concentrated largely in the manufacturing and chemical product sectors. Much of the U.S. investment in manufacturing involves assembly of apparel and integrated circuits from imported parts. In addition, all baseballs used in the Major Leagues are assembled in Costa Rica from U.S. parts and materials.

IMPORT POLICIES

Tariffs and Other Import Charges

Costa Rica is a member of the Central American Common Market (CACM), which also includes Guatemala, El Salvador, Honduras, and Nicaragua. With the exception of certain items, notably agricultural products, there are no duties for products traded among CACM members. The CACM had a common external tariff (CET) ranging from 5 to 20 percent for most products. In 1995, the members of the CACM agreed to reduce the CET to 0 to 15 percent, but allowed each member country to determine the timing of the reductions. Costa Rica's timetable for reducing the tariffs is contingent on progress in reducing the fiscal deficit.

In the Uruguay Round negotiations, the Government of Costa Rica (GOCR) agreed to eliminate all import quotas and, in 1999, has a tariff binding of 50 percent on most goods, excluding selected agricultural commodities which are protected with significantly higher tariffs. Examples of such protection are dairy products and poultry products, with tariff bindings of 103 and 254 percent, respectively. Under the WTO Agreement on Agriculture, Costa Rica agreed to permit imports of up to 3 percent of national consumption of these goods, growing to 5 percent in 2004.

Most applied tariffs on agricultural products range from 1 to 20 percent ad valorem. The GOCR reduced duties on imported raw materials, bulk grains, and oilseeds from 5 to 1 percent in July 1996. Imported automobiles, both new and used, are taxed relatively heavily. Under new regulations in effect since late 1998, total taxes on cars of the latest four model years are 59 percent ad valorem, while rates for older cars are 71 percent and 85 percent, depending on age.

Quantitative Restrictions and Import Licensing

The Costa Rican Legislative Assembly approved legislation implementing the Uruguay Round Agreements in December 1994. The law, published on December 27, 1994, eliminates quantitative restrictions and requirements for import licenses and permits, including for the following: pork and related by-products, poultry, seeds, rice, wheat, corn (white and yellow), beans, sugar, sugar cane, and related products, dairy products, and coffee. The import permits in many cases have been replaced by tariffs as a result of the Uruguay Round negotiations.

Customs Procedures

Costa Rican customs procedures have long been complex and bureaucratic. However, the 1995 passage of a new general customs law formalized reforms aimed at streamlining customs procedures. Much of the necessary processing is now accomplished electronically and "one-stop import and export windows" have significantly reduced the time required for customs processing.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Costa Rican law requires exclusive use of the metric system, but in practice Costa Rican officials do not challenge U.S. and European commercial and product standards. However, a "system of standards" is not uniformly implemented in Costa Rica due to a lack of adequate laboratory equipment and funds.

GOVERNMENT PROCUREMENT

Costa Rica's government procurement system is based on the 1995 reforms to the Costa Rican Financial Administration Law (Law No. 7494), which came into effect in May 1996. Government entities or ministries with a regular annual budget of more than $200 million are permitted to issue public tenders subject to publication in the official newspaper (La Gaceta) for purchases over $2.3 million. Entities may make purchases between $130,000 and $2.3 million through tenders circulated among a registered suppliers list. Purchases under $130,000 may be made from a list of pre-selected bidders.

EXPORT SUBSIDIES

All export incentives, including tax credit certificates (CATs) and tax holidays, will be phased out by September 30,1999.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Costa Rica is a signatory of all major international agreements and conventions on trademarks, copyrights, and patent protection. Costa Rica became a member of the World Intellectual Property Organization (WIPO) in 1980. A report prepared by the International Intellectual Property Alliance (IIPA) estimates that copyright infringements in Costa Rica alone cost U.S. firms $6.0 million in 1998.

Copyrights

Costa Rican copyright law is generally adequate, but not uniformly enforced. The copyright regime was revised in 1994 to provide specific protection for computer software. While piracy of satellite transmissions by the domestic cable television industry has been curtailed, some apartment buildings and large Costa Rican hotels continue to engage in satellite signal piracy. Piracy of video recording and computer software is also widespread, although some progress has been made in reducing such practices. Video piracy has been reduced of the last few years from virtually 100 percent to a lesser level.

Costa Rica

Patents

In 1995, the Legislative Assembly ratified the Paris Convention for the Protection of Industrial Property. However, Costa Rican patent law is deficient in several key areas. Patents are granted for a non-extendable 12-year term from the date of the grant. In the case of products deemed to be in the "public interest," such as pharmaceuticals, agricultural chemicals, fertilizers, and beverage/ food products, the term of protection is only one year from the date of grant. A new patent law is being drafted to bring Costa Rica in line with its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), including extending full patent protection term for inventions designated as being "in the public interest." Costa Rica is already bound to implement its TRIPS obligations by January 1, 2000.

Trademarks

Counterfeiting of well-known marks is widespread. Legal recourse against these practices in Costa Rica is available, but may require protracted and costly litigation. In 1994, Costa Rica signed the Central American Convention for the Protection of Trademarks.

SERVICES BARRIERS

State monopolies cover insurance; telecommunications; large electrical generation plants; energy distribution,; petroleum exploration, refining, distribution and marketing to the retail level; and railroad transportation. In addition, restrictions on the participation of foreign companies exist in private sector activities, such as customs handling, medical services, and other professions requiring Costa Rican registration and long-term residency. Wholesalers must have resided in Costa Rica for 10 years have conducted business there for three years.

Costa Rica is overdue in providing to the WTO an acceptance of the Fifth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on financial services into effect.

Financial reform legislation enacted in 1995 eliminated the state-owned banks' monopoly on checking accounts and savings deposits under 30 days' duration and allowed private commercial banks to access the Central Bank's discount window beginning in September 1996. To qualify for the benefits of the law, however, private commercial banks are required to lend between 10 and 17 percent of their short-term assets to state-owned commercial banks and/ or to open branches in rural areas of the country. This requirement is being appealed in the courts.

Foreign individuals wishing to participate in some sectors may be discouraged by regulations governing the practice of a profession. For example, medical practitioners, lawyers, certified public accountants, engineers, architects, teachers, and other professionals must be members of an officially recognized guild ("colegios") which sets residency, examination, and apprenticeship requirements.

The Costa Rican constitution grants a monopoly over the insurance sector for the National Insurance Institute (INS). The INS also provides fire department services and owns and manages medical/rehabilitation clinics. In the absence of an insurance monopoly, foreign companies would have the potential to capture as much as 60 percent of the market, given the financial strength, range of product offerings, and global competitiveness of the industry. Industry observers estimate that U.S. participation would account for 50 to 60 percent of the international component of the Costa Rican insurance market, or up to 36 percent of the total.

INVESTMENT BARRIERS

An expropriation law (Law No. 7495) was enacted in 1995 to improve the protection of private property. The new law makes clear that expropriations are to occur only after full advance payment is made, in accordance with Article 45 of the Constitution. The law applies to Costa Ricans and foreigners alike. Despite improvements in the legal framework, however, many expropriations, as well as land invasions by squatters, remain unaddressed. One land invasion resulted in the death of a U.S. citizen in late 1997. As a result, the U.S. Government has placed increased pressure on the Costa Rican Government to provide prompt, adequate, and effective compensation; to improve security; and to protect property owners.

Costa Rica affords national treatment for foreign investors who incorporate or otherwise establish their business locally, and there are no restrictions on the repatriation of investment assets or profits. However, private investment, both domestic and foreign, is restricted in the areas of energy, telecommunications, insurance, alcoholic beverages, railroad transportation, and petroleum (except for retailing). The U.S. Government and Costa Rica have attempted to negotiate a bilateral investment treaty, but there has been little movement in the negotiations in the past two years.

It is impossible to quantify with precision whether, or to what extent, existing barriers to investment in protected sectors have an impact on U.S. exports. Protected sectors of the Costa Rican market, including the telecommunications and energy sectors, have historically been favorably disposed toward purchasing U.S. supplies and equipment. U.S. market share in supplying equipment to the telecommunications and electrical energy sectors as a whole has traditionally run between 30 and 45 percent; the parastatal telecommunications and energy utilities, however, traditionally purchase well over half of their equipment from U.S. sources.

Costa Rica has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content requirements in the economy in general. Proper notification allows developing-country WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. Costa Rica therefore must eliminate these measures before January 1, 2000.

ELECTRONIC COMMERCE

There are no known tariff or non-tariff measures, burdensome or discriminatory regulations, or discriminatory taxation affecting electronic commerce.

OTHER BARRIERS

On January 9, 1995, USTR initiated a Section 301 investigation of Costa Rica's implementation of the Banana Framework Agreement (BFA) concluded by Costa Rica and the European Union (EU) on January 1, 1995. On January 10, 1996, USTR determined that Costa Rica's policies, acts and practices were unreasonable or discriminatory and a burden or restriction on U.S. commerce. Taking into account the positive steps Costa Rica had taken in revising its internal banana regime and its willingness to cooperate with the United States in seeking reform of the EU banana regime, USTR decided that the appropriate action was to implement a process aimed at addressing the outstanding issues, while stressing that additional action may still be taken. USTR continues to monitor Costa Rica's compliance with the terms of the MOU.

DOMINICAN REPUBLIC

In 1998, the U.S. trade deficit with the Dominican Republic was $466 million, an increase of $65 million from 1997. U.S. merchandise exports to the Dominican Republic were $3.8 billion, an increase of $49 million (1.3 percent) over 1997. The Dominican Republic was the United States' 29th largest export market in 1998. U.S. imports from the Dominican Republic were $4.4 billion in 1998, an increase of $114 million (2.6 percent) from the level of imports in 1997.

The stock of U.S. Foreign Direct Investment (FDI) in the Dominican Republic in 1997 was $476 million, an increase of 19 percent from the level of U.S. FDI in 1996. U.S. FDI in the Dominican Republic is concentrated largely in the manufacturing and financial sectors. Much of the U.S. investment in the manufacturing sectors is located in export processing zones where footwear, apparel and, to a lesser extent, electronic products and medical goods, are assembled from U.S. components and materials and then exported back to the United States.

IMPORT POLICIES

Tariffs

Tariffs on most products fall within a range of 5 to 35 percent. However, the Government of the Dominican Republic imposes a 5 to 80 percent selective consumption tax on "nonessential" imports such as home appliances , alcohol, perfumes, jewelry, automobiles and auto parts. In 1998, the Fernandez Administration again proposed an extensive tariff reduction to the Dominican Congress in connection with its plans to submit for ratification a free trade agreement negotiated with Central America. The Congress has not yet acted on the proposal.

U.S. producers of many products face an additional *de facto* trade barrier in the form of a highly- discretionary customs valuation system. In addition, import permits are required for most agricultural products which are often delayed or withheld to protect local producers. Arbitrary customs clearance procedures sometimes delay the importation of merchandise for lengthy periods. Furthermore, the Dominican Government continues to require importers to obtain from a Dominican Consulate in the United States a consulate invoice and "legalization" of documents with attendant fees and delays.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Dominican Republic generally accepts U.S. certifications and standards. U.S. agricultural exports are sometimes subject to arbitrarily-enforced and non-scientifically based phytosanitary measures.

GOVERNMENT PROCUREMENT

There is no explicit "buy national" policy, however, government procurement is often conducted without the benefit of open bidding. The processes by which contractors and/or suppliers are chosen are generally opaque.

EXPORT SUBSIDIES

The Dominican Republic does not have aggressive export-promotion schemes other than the exemptions given to firms in the free trade zones. A tax rebate scheme designed to encourage exports is considered a failure and is usually avoided by exporters.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Dominican law does not provide adequate and effective protection of intellectual property rights including levels of protection that are consistent with international standards such as the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). For example, the copyright law is deficient in a number of areas. The Dominican Republic has inadequate patent protection, especially for pharmaceuticals. The Dominican Republic was upgraded to the USTR Special 301 Priority Watch List in 1998 due to continuing concerns about lack of TRIPS-consistent laws, and inadequate enforcement against piracy and counterfeiting, particularly of pharmaceutical products. PhARMA currently assesses that the economic losses to U.S. industry in the Dominican market in pharmaceutical products alone are in excess of $50 million. A report prepared by the International Intellectual Property Alliance (IIPA) estimates that copyright infringements in the Dominican Republic cost U.S. firms $3.0 million in 1998.

Copyrights

The piracy of computer software, video and audio tapes, and compact disk technologies, as well as TV piracy continues although the Dominican copyright office has been more active in the past year in seeking to enforce the law. A U.S. government review of the Dominican Republic's trade preferences under the generalized system of preferences (GSP), in response to a petition from the Motion Picture Export Association of America claiming widespread cable television piracy, was terminated in 1994 when the Dominican Government took steps to address U.S. concerns. Larger cable television companies now generally pay fees and royalties, although smaller systems may still be pirating signals and programs. The MPA and Television Association of Programmers (TAP) visited the Dominican Republic again in 1997 to raise this recurring problem. The Dominican Government has taken some steps in response, although such initiatives have not been enough to stem the problem.

Patents

The existing 1911 Law provides for broad exclusions of subject matter from patentability, and include onerous local working requirements. Current law is also inadequate with respect to term of protection. The Fernandez Government has submitted new intellectual property legislation to the Congress as part of a broader commercial code. As now written, this legislation will contravene several TRIPS provisions, such as those pertaining to compulsory licenses. The Ministry of Health is still granting marketing approvals for pharmaceutical products that infringe existing patent rights.

Trademarks

Trademark enforcement is inadequate, particularly in the area of well-known apparel and athletic shoe brands, which are counterfeited and sold widely on the local market.

SERVICES BARRIERS

Until recently, foreign participation in the Financial Services Sector was restricted by law. The 1995 Foreign Investment Law, and a Financial-Monetary Code still before the Dominican Congress, permit foreign involvement in the Financial Services Sector. However, the practical impact of these provisions is not clear. There is no secondary securities market in the Dominican Republic so questions of brokerage services and securities underwriting, trading, etc., do not arise. The Dominican Republic is overdue in providing to the WTO an acceptance of the Fifth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on financial services into effect.

ELECTRONIC COMMERCE

There are no known tariff or non-tariff measures, burdensome or discriminatory regulations, or discriminatory taxation affecting electronic commerce.

ECUADOR

In 1998, the U.S. trade deficit with Ecuador was $69 million, a decrease of $464 million from the U.S. trade deficit of $533 million in 1997. U.S. merchandise exports to Ecuador were approximately $1.7 billion, an increase of $164 million (10.8 percent) from the level of U.S. exports to Ecuador in 1997. Ecuador was the United States' 48th largest export market in 1998. U.S. imports from Ecuador were about $1.8 billion in 1998, a decrease of $300 million (14.6 percent) from the level of imports in 1997.

The stock of U.S. foreign direct investment (FDI) in Ecuador in 1997 was $1.2 billion, an increase of over 27 percent from the level of U.S. FDI in 1996. U.S. FDI in Ecuador is concentrated largely in the petroleum, manufacturing, and wholesale sectors.

IMPORT POLICIES

Tariffs

When it joined the World Trade Organization (WTO) in January 1996, Ecuador bound most of its tariff rates at 30 percent or less. Ecuador's average applied tariff rate is about 13 percent ad valorem. Since February 1995, Ecuador has applied a common external tariff (CET) with two of its Andean pact partners, Colombia and Venezuela. The CET has a four-tiered structure with levels of 5 percent for most raw materials and capital goods, 10 or 15 percent for intermediate goods, and 20 percent for most consumer goods. Ecuador harmonized its tariff schedule with the CET but took numerous exceptions in order to maintain lower tariff rates on capital goods and industrial inputs. Agricultural inputs and equipment are imported duty-free. In January 1999, the Government of Ecuador imposed additional surcharges on imports until April 1999 to raise additional revenues. Given Ecuador's continuing fiscal problems, the surcharges could be extended beyond the April deadline.

Nontariff Measures

Ecuador has failed to meet deadlines for fulfilling some of its WTO obligations to eliminate remaining non-tariff barriers. Prior authorization for certain goods is required before the central bank can issue an import license. For instance, the superintendency of telecommunications must authorize the import of telecommunications equipment for standards purposes. In spite of Ecuador's WTO accession commitment not to impose arbitrary and quantitative restrictions on agricultural imports, the Ministry of Agriculture often denies the issuance of import permits to protect local producers. The products most affected by this policy include frozen chicken parts, turkeys and, to a lesser extent, apples and fresh fruit. Import licenses require two signatures, one from the Ecuadorean Animal Plant Health Inspection Service (SESA) and one from the Agriculture Ministry's Under Secretary of Policy and Investment. The Government of Ecuador claims its import procedures are not designed to delay imports and that the Under Secretary's signature is necessary to ensure that administrative import procedures are followed. However, the requirement for two approvals constitutes a non-tariff barrier that adversely affects U.S. exporters.

At present, 138 agricultural products, including wheat, white and yellow corn, rice, soybeans, soya and palm oil, barley, sugar, chicken parts, dairy products, and pork meat, are subject to a variable import tariff or price band system. Under this system, the ad valorem CET rates are adjusted according to the relationship between "marker" commodity reference prices and established floor and ceiling prices. The marker commodity reference prices are issued every other week by the Andean Community Secretariat. Upon accession to the WTO, Ecuador bound its tariffs plus price bands on these commodities between 20 and 95 percent. All price bands are to be phased out by 2001, with lower tariffs bound at 20 to 85.5 percent. Presently, however, customs authorities often do not respect the price band system for some imports, such as turkey meat. There have been reports that the customs authorities do not always accept the maximum tariff rates and demand payments above WTO bound tariffs.

Through tariff rate quotas (TRQs), Ecuador has agreed to provide minimum market access at nonrestrictive tariff rates while providing a measure of protection for politically sensitive commodities. Except for wheat, corn, barley and soybeans, the Government of Ecuador has yet to implement the TRQ system. Tariff rates of 19 to 45 percent are used for seventeen agricultural products, mainly wheat, corn, chicken parts, turkey, powdered milk and soybean meal.

Ecuador also continues to impose certain formal and informal quantitative restrictions that violate its WTO obligations. Ecuador has failed to meet its promise to the WTO to lift bans on the import of used motor vehicles, tires and clothing by July 1, 1996.

Pre-shipment inspection by an authorized inspection company before shipment and after specific export documentation has been completed at the intended destination results in delays far exceeding the time saved in customs clearance. Customs authorities sometimes perform spot-checking, causing even further delays. This generally adds six to eight weeks to the date when merchandise reaches the retailer. Such practices discriminate against U.S. exporters by making them less competitive than local suppliers.

The Government of Ecuador has not complied with its WTO accession commitment to equalize the application of excise taxes between imported and domestic products. Excise taxes are levied on all liquor (26 percent), beer (30 percent), soft drinks (10 percent), cigarettes (75 percent), motor vehicles (5 percent) and aircraft (10 percent). Since excise taxes on imports are calculated on CIF values, the effective rate is higher for imports than domestic products.

STANDARDS, TESTING, LABELING AND CERTIFICATION

National standards are set by the Ecuadorean norms institute (INEN) of the Ministry of Commerce, and generally follow international standards. Ecuador committed itself in its WTO accession protocol to conform with the WTO agreement on technical barriers to trade.

According to Ecuadorean importers, bureaucratic procedures required to obtain INEN clearance for imports have recently improved, but still appear to discriminate against foreign products. In 1998, Ecuador implemented a new law to eliminate some excessive requirements, such as notarization.

Ecuador has not yet fulfilled its 1995 bilateral commitment to the United States to accept U.S. certificates of free sale as the basis for sanitary registrations. To do so, the health code must be amended. The Ministry of Agriculture is responsible for administering Ecuador's zoosanitary and phytosanitary import controls. Although Ecuador made a commitment in its WTO accession to comply with the agreement on the application of sanitary and phytosanitary measures (SPS), denials of SPS certification often appear to lack scientific bases and have been used in a discriminatory fashion to block the import of U.S. products that compete with Ecuadorean production.

The Izquieta Perez National Hygiene Institute (INHIP) and accredited public and private laboratories conduct tests on consumer products that are required to obtain a sanitary registration from the Ministry of Health. Sanitary registrations are required for imported, as well as domestic, processed foods, cosmetics, pesticides, pharmaceuticals and syringes, as well as some other consumer goods. Corruption and inefficiency in the sanitary registration process has delayed and even blocked the entry of some imports from the United States.

GOVERNMENT PROCUREMENT

Government procurement is regulated by the 1990 public contracting law, although the government is considering introducing new legislation. In some instances, the military is not required to use this law for its purchases. Foreign bidders must be legally represented in Ecuador. There is no formal discrimination against U.S. or other foreign suppliers. Bidding for government contracts can be cumbersome and insufficiently transparent. Ecuador is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Ecuador is considering the creation of an export credit agency. In the meantime, the National Finance Corporation (CFN) has begun to offer export financing. The government uses a drawback system to reimburse the cost of duties and taxes paid on raw material and other inputs incorporated in products that are subsequently exported.

LACK OF INTELLECTUAL PROPERTY PROTECTION

In 1998, the Ecuadorean Congress passed, and the President signed, a comprehensive law significantly improving the legal basis for protecting intellectual property rights (IPR), including patents, trademarks and copyrights. As of February 1999, the government had signed, but not yet published, regulations to implement the law.

The new law provides significantly greater protection for intellectual property rights, and notwithstanding the lack of implementing regulations, enforcement of patents and copyrights has improved. Still, it can be difficult to gain protection through the legal system. In 1998, USTR reaffirmed Ecuador's place on the "Priority Watch List" under the Special 301 provision of the 1988 Trade Act. The United States continues to pursue its IPR concerns with Ecuador, including issuance of scores of pending (transitional) "pipeline" pharmaceutical patent applications and the continued judicial application of the discriminatory, WTO-inconsistent 1976 agents and distributors protection law (Dealers' Act).

The scope of Ecuador's current IPR protection is provided under its new intellectual property rights law, Andean pact decisions 344, 345 and 351, and its public commitment to apply the WTO TRIPs agreement. Ecuador has ratified the Berne Convention for the protection of literary and artistic works and the Geneva Phonogram Convention, but not the Paris Convention for the Protection of Industrial Property. Ecuador is a member of the World Intellectual Property Organization (WIPO).

Ecuador

In October 1993, Ecuador and the United States signed the bilateral intellectual property rights agreement (IPRA) that mandates full protection for copyrights, trademarks, patents, satellite signals, computer software, integrated circuit layout designs and trade secrets. However, the agreement has not been ratified by the Ecuadorean Congress. The IPRA obligates Ecuador to establish criminal and border enforcement systems. Many of the areas covered by the IPRA have been addressed by the new IPR law, except for the pending pharmaceutical "pipeline" applications held by U.S. and other foreign companies.

In response to a November 1996 decision by the Andean Pact Tribunal, Ecuador repealed its implementing regulations for Andean Pact Decision 344 on industrial property, which included provisions for "pipeline" protection for previously unpatentable products. In December 1996, another decree re-established the National Directorate of Industrial Property (DNPI) as the competent patent and trademark authority and authorized the DNPI only to administer decision 344 as written. In mid-1998, the Government of Ecuador issued 12 "pipeline" applications, but declined to take action on more than 140 other "pipeline" applications, citing, inter alia, Andean Community prohibitions and its intention to abolish the DNPI.

Before its September 1997 prospective repeal, the Dealers' Act prevented U.S. and other foreign suppliers from terminating distributorship contracts without mutual consent and judicial approval, even if there was a termination clause in the contract that allowed either party to unilaterally terminate the contract. The law violated national treatment guarantees of both the WTO and the U.S.-Ecuador Bilateral Investment Treaty, and was applied in ways that appeared to contravene Ecuador's obligations under the TRIPs Agreement. The Act has continued to form the basis for judicial decisions involving contracts signed before the repeal and for cases in the judicial system before the repeal. As of the date of this report, several court cases against U.S. firms remain pending, with very large potential claims that bear no relation to alleged damages.

Despite improvements, enforcement of intellectual property rights remains a serious problem in Ecuador. The national police and the customs service are responsible for carrying out IPR enforcement orders, but there has sometimes been difficulty getting court orders enforced. There is a widespread local trade in pirated audio and video recordings, computer software and clothing. Local registration of unauthorized copies of well-known trademarks has been reduced. Some local pharmaceutical companies produce or import pirated drugs and have sought to block improvements in patent protection.

Patents and Trademarks

The new IPR law provides an improved legal basis for protecting patents, trademarks and trade secrets. However, concerns remain with the lack of pipeline protection, provisions permitting parallel importation, working requirements for patents, and ambiguities surrounding protection for test data. Further improvement awaits publication of the law's implementing regulations and the creation of the Ecuadorean Intellectual Property Institute (IEPI). Until IEPI is created, patent and trademark registration applications can be filed with the National Directorate of Industrial Property in the Ministry of Trade.

Copyrights

The new IPR law protects printed and recorded works for the life of the author plus 70 years. Corporations may protect works for 70 years from production date. The copyright law covers software and satellite signals. Semiconductor chip layouts are specifically protected.

SERVICES BARRIERS

Ecuador has ratified the WTO Agreement on Financial Services and has a relatively open regime in financial services. The 1993 Equity Markets Law and the 1994 General Financial Institutions Law established open markets in financial services and provide for national treatment. Foreign professionals are subject to national licensing legislation; accountants must be certified by the superintendency of banks. Foreign insurance companies may not present offers on government tenders.

Telecommunications services are reserved to the state, but foreign companies enjoy national treatment in providing services not monopolized by the state and will be invited to participate in the planned partial privatization of the two state telephone companies in 1999 or the year 2000. In the WTO negotiations on basic telecommunications services, Ecuador made commitments for domestic cellular services, but did not adopt commitments for other domestic and international services. It was one of the very few countries that chose to make market access commitments without reinforcing regulatory commitments.

INVESTMENT BARRIERS

Ecuador's Foreign Investment Policy is governed largely by the national implementing legislation for Andean Pact Decisions 291 and 292 of 1991 and 1993, respectively. Foreign investors are accorded the same rights of entry as Ecuadorean private investors, may own up to 100 percent of enterprises in most sectors without prior government approval, and face the same tax regime. There are no controls or limits on transfers of profits or capital, and foreign exchange is readily available. There are no performance requirements, with the exception of the auto regime. A bilateral investment treaty with the United States that guarantees access to binding international arbitration entered into force in May 1997.

Certain sectors of the economy are reserved to the state, although the scope for private sector participation, both foreign and domestic, is increasing. All foreign investment in petroleum exploration and development in Ecuador must be carried out under a contract with the state oil company. However, the government plans to attract increased foreign investment in the telecommunications, electricity, and oil sectors through privatization and new legislation. Foreign investment in domestic fishing operations, with exceptions, is limited to 49 percent of equity. Foreign companies cannot own more than 25 percent equity in broadcast stations. Foreign investors must obtain armed forces approval to obtain mining rights in zones adjacent to international boundaries. Foreigners are prohibited from owning land on the frontier or coast.

Appropriate compensation for expropriation is provided for in Ecuadorean law, but is often difficult to obtain. The extent to which foreign and domestic investors and lenders receive prompt, adequate and effective compensation is largely related to the particular judicial process underway. It can be difficult to enforce property and concession rights, particularly in a agriculture and mining sectors. Oil companies often have had difficulties resolving contract issues with the state oil company. Although Ecuador deposited its instrument of accession to the International Center for the Settlement of Investment Disputes (ICSID), the government maintains that congressional ratification is necessary to make that membership effective.

Under the Andean Community common automotive policy, Ecuador, Colombia and Venezuela impose regional content requirements in the automotive assembly industry in order to qualify for reduced duties on imports. In its WTO accession protocol, Ecuador committed to eliminate the local content requirement of its auto regime before January 1, 2000, and not to increase its inconsistency with the TRIMs Agreement in the interim.

EGYPT

In 1998, the U.S. trade surplus with Egypt was $2.4 billion, a decrease of $783 million from the U.S. trade surplus of $3.2 billion in 1997. U.S. merchandise exports to Egypt were approximately $3.1 billion, an decrease of $780 million (20.3 percent) from the level of U.S. exports to Egypt in 1997. Egypt was the United States'35gh largest export market in 1998. U.S. imports from Egypt were about $660 million in 1998, an increase of $3 million (0.4 percent) from the level of imports in1997.

The stock of U.S. foreign direct investment (FDI) in Egypt in 1997 was $1.6 billion, an increase of over 21 percent from the level of U.S. FDI in 1996. U.S. FDI in Egypt is concentrated largely in the petroleum, manufacturing, and wholesale sectors.

IMPORT POLICIES

The Government of Egypt appeared to move in contradictory directions on import policy in 1998. The government frequently reiterated its commitment to economic reform and further liberalization of its highly centralized and regulated economy, and took steps to encourage trade, including the reduction of some tariffs. Egypt ratified the WTO Agreement on Financial Services and signaled its intent to accede to the WTO Basic Telecommunications Agreement and Information Technology Agreement. However, in 1998, Egypt implemented restrictive trade measures such as a decree prohibiting transshipment of all imported durable and non-durable goods and establishing new certificate of origin requirements for those goods. Despite a series of tariff reductions, tariff rates on a number of products remain high, and mandatory quality control standards and other non-tariff barriers restrict imports of some U.S. products.

Tariffs

In 1998, Egypt reduced the maximum tariff rate on most products from 50 percent to 40 percent and consolidated rates of 35 to 45 percent at 30 percent. According to the Egyptian customs service, Egypt's average trade-weighted tariff was 15 percent in 1998. Egypt also assesses an import surcharge of 2 percent to 3 percent. Despite tariff reductions, Egypt's rates are still relatively high compared to other developing countries with large internal markets and diversified industrial economies. In addition, Egypt maintains a number of exceptions to its maximum tariff levels, as well as various surcharges and taxes on imports. High rates apply to automobiles with engines larger than 1300 cc (85 to 110 percent, plus steep sales taxes), alcoholic beverages, certain luxury items, whole poultry (70 percent), canned fruit products (55 percent), confections (21 to 70 percent), and textiles (54 percent, plus 10 percent sales tax). According to industry sources, foreign movies are subject to duties and import taxes equalling approximately 87 percent of the value of a film, as well as a 10 percent sales tax. Egypt also applies a discriminatory sales tax on high quality imported flour of 10 percent (in addition to a 5 percent tariff) which does not apply to locally produced flour. In addition, applied tariffs on several dairy products, including non-fat dry milk, whey powder, grated cheese, and processed and other cheeses, exceed Egypt's WTO-bound rates.

Customs Procedures

In 1993, Egypt adopted the harmonized system of customs classification. Nonetheless, exporters and importers claim that customs duty valuation often is arbitrary and that the rates charged often are higher than prescribed in the tariff code. Tariffs are calculated using the so-called "Egyptian selling price," based on the commercial invoice accompanying a product the first time it is imported. Customs authorities retain information from the original commercial invoice and expect subsequent imports of the same product (regardless of the supplier) to have a value no lower than that noted on the invoice from the first shipment. As a result of this presumption of increasing prices, and the belief that under-invoicing is widely practiced, customs officials routinely increase invoice values from 10-30 percent for customs valuation purposes.

In an effort to address some of these problems, Egypt is implementing an AID-funded program of training and technical assistance to automate customs valuation and processing in Egypt's major ports.

Import Bans

While Egypt has eliminated most outright import bans, the notable exceptions are the bans on poultry parts and apparel products. In accordance with its obligations under the WTO Agreement on Textiles and Clothing, Egypt lifted the import ban on most textiles on January 1, 1998. The remaining import ban on apparel is due to be eliminated in 2001. An import ban on whole poultry was removed in 1997.

Removal of an item from the banned list does not, however, eliminate all import obstacles. In the case of textiles, tariffs were set at 54 percent, plus a 10 percent sales tax, and a 1 percent service fee. In replacing the ban on whole poultry, Egypt initially set a tariff of 80 percent and introduced an arbitrary import reference prince of $1,500 per metric ton, yielding an effective tariff rate of over 100 percent. For 1999, Egypt has lowered the poultry tariff to 70 percent, in accordance with its WTO commitment to reduce the duty to 60 percent by the year 2005. Egypt also has begun to reduce tariffs on 289 other agricultural products. The United States will continue to monitor Egypt's progress on tariff reductions through the WTO Committee on Agriculture.

Although most outright import bans have been eliminated, the Egyptian Government has implemented several new measures which may have had a similar negative impact on trade. In November 1998, Egypt announced Decree 619 requiring that all consumer goods be imported directly from the country of origin. Decree 619 also imposed a certificate of origin requirement for imports. Also in November 1998, the government implemented decrees 577 and 580 stipulating that automobiles must be imported in the year of manufacture. The sudden and unexpected enactment of these decrees, as well as their impact on trade, have raised concerns among U.S. exporters. The measures also appear to be inconsistent with Egypt's GATT/WTO obligations and with the government's stated commitment to trade liberalization.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Many import items are subject to mandatory quality standards and inspections that go beyond normal health and safety requirements. As of October 1998, 135 items were subject to these controls, including foodstuffs, spare parts, construction products, electronic devices, appliances, and many consumer goods. Food imports, in particular, are subject to confusing and arbitrary quality standards. For example, Egyptian standard no. 1522 (1991) requires that meat imported for direct consumption contain no more than 7 percent fat, a level virtually impossible to reach for premium beef. As a result, U.S. exporters lose up to $2 million annually in sales of high quality beef.

While standard international practice generally allows industry to regulate the shelf-life of products, the Government of Egypt requires that many imports (mainly foodstuffs) entering Egyptian ports must have 50 percent or more of their shelf life remaining. However, Egyptian shelf life standards ignore quality differences between producers and often have been established without any scientific justification. An August 1994 decree extended shelf life standards to certain non-food imports, such as syringes and catheters.

Increasingly frustrated by problems with quarantine inspection, some importers have begun scheduling pre-inspection visits to the United States to facilitate import procedures upon arrival in Egypt. Exporters of agricultural and other products are frequently handicapped by the lack of advance notification on changes in import regulations, as in the case of new animal health requirements implemented in 1998 which restricted imports of U.S. dairy cattle. In general, Egypt should adhere to WTO guidelines on notification of changes in its import regulations.

Although Egyptian authorities stress that standards applied to imports are the same as those applied to domestically-produced goods, importers report that testing procedures for imports often differ and note that inadequately equipped labs and faulty analysis frequently result in inaccurate test results.

Further complicating import inspection procedures, five Egyptian ministries regulate agricultural imports: the Ministries of Agriculture, Health, Economy, Industry, and Scientific research. Ministry regulations sometimes conflict and often are inconsistent with international standards or practices. For example, Ministry of Health guidelines conflict with Ministry of Industry meat labeling regulations, which require that a label with the importer's name be included inside the packaging. This requirement also raises processing costs and discourages some exporters from competing in the market, generally resulting in higher prices to the consumer.

GOVERNMENT PROCUREMENT

Egypt is not a signatory of the WTO Agreement on Government Procurement. In 1998, Egypt passed a law outlining new regulations for government procurement. Among its provisions, the new law prohibits transforming a bid into a tender (a major defect of earlier legislation). In addition, it mandates that technical factors be considered in addition to price in the awarding of contracts. Previously, publicly-owned companies received preference, but under the new law, this preference only applies when the bid of the publicly-owned firm is within 15 percent of the other bids. The law also seeks to increase contractor rights through such steps as mandating the immediate return of deposits once the government announces the results of a tender. This law makes a number of positive changes to Egypt’s government procurement practices, among them the requirement for an explanation of the grounds for a contract award. Concerns about transparency remain, however. For example, the Prime Minister has the authority to authorize the method of tendering for specific entities according to terms, conditions and rules which he determines.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Egypt is a member of the World Trade Organization (WTO), but as a least developed country the Egyptian Government may avail itself of a transitional period for complying with obligations under the Trade Related Aspects of Intellectual Property (TRIPs) Agreement. Egypt is a member of the World Intellectual Property Organization (WIPO), and is a signatory to Berne Convention for the protection of literary and artistic works (copyright) and the Paris Convention for the protection of industrial property (patent and trademark), and the Madrid Agreement Concerning the International Registration of Marks (Stockholm Act of 1967). The U.S. Trade Representative placed Egypt on the “Special 301” Priority Watch List in 1997 and 1998 due to a lack of progress in patent protection and in the enforcement of copyright protection despite an extensive program of assistance in the intellectual property area.

Egypt took measures in 1998 that could contribute positively to IPR enforcement and administration in the future. Progress was achieved in strengthening the operational and management capacities of its patent and trademark office, and the government adopted an "IPR reform plan" which includes plans to meet WTO TRIPs requirements as outlined below.

Copyrights

Since 1997, Egypt has strengthened the enforcement of copyright protection laws already on the books, although enforcement remains erratic and inadequate. Law 29 of 1994 amended the copyright law (Law 38 of 1992) to ensure that computer software was afforded protection as a literary work, allowing it a 50-year protection term. Law 38 of 1992, an amendment to the out-of-date 1954 copyright law, increased penalties against piracy and provided specific protection to computer software. A 1994 decree also clarified rental and public performance rights, protection for sound recordings, and the definition of personal use. Copyright piracy continues to affect most categories of works, including motion pictures (in video cassette format), sound recordings, printed matter (notably medical textbooks), and computer software. The U.S. motion picture industry alone is estimated to have lost $11 million in 1998 due to audiovisual piracy.

In the area of software piracy enforcement, the Government of Egypt has failed to target major pirate producers, and instead focused on small-scale end users. Much remains to be done in this area, including eliminating the use of pirated software and unauthorized copying of licensed software by government ministries and providing effective enforcement against major end-users of pirated materials.

Patents

The existing Egyptian patent law (Law 132 of 1949) provides protection below international standards. It contains overly broad compulsory licensing provisions and excludes from patentability substances prepared or produced by chemical processes if such products are intended for food or medicine. The patent term is 15 years from the application filing date, compared with the international standard of 20 years. A 5-year renewal may be obtained only if the invention is of special importance and has not been adequately worked to compensate patent holders for their efforts and expenses. In the area of pharmaceuticals and medicines, manufacturing processes are patentable, but the term for process patents is only 10 years. Compulsory licenses, which limit the effectiveness of patent protection, are granted if a patent is not worked in Egypt within three years or is worked inadequately.

Since 1992, U.S. experts have met regularly with Egyptian experts responsible for revising the patent law. Egypt has drafted, but not passed, legislation designed to improve patent protection by providing product versus process patents, and increasing the protection period to 20 years, and offering some limited improvements in the area of compulsory licensing. However, the government may opt to delay implementation of the legislation, once passed, to take advantage of the transition period for product patent protection for pharmaceuticals through 2005 granted to least developed countries under the WTO TRIPs agreement. The United States has conveyed its serious concerns to the Government of Egypt in this regard, and requested that Egypt expedite patent protection for pharmaceutical products.

Trademarks

Egypt is considering completely revising its laws in order to enhance significantly legal protection for trademarks and industrial designs. The current trademark law, Law 57 of 1939, is not enforced strenuously and the courts have only limited experience in adjudicating infringement cases. Fines amount to less than $100 per seizure, not per infringement. Judgments and enforcement must be made separately in each of the 26 governorates. In addition, in recent months, recording companies have experienced difficulties when attempting to transfer trademark registrations from one local agent to another. Egyptian Government employees undertook substantial USAID-funded training in 1998, training which should improve the quality and transparency of the trademark registration system.

Other Industrial Property

Trade Secrets: Egypt has no specific trade secrets legislation. Protection of commercially valuable information is possible through contractual agreement between parties. Breach of contractual terms of protection can be remedied in legal proceedings under either the civil or criminal code, depending on the severity of the damage caused.

Semiconductor Chip Layout Design: There is no separate legislation protecting semiconductor chip layout design, although Egypt signed the Washington semiconductor convention.

SERVICES BARRIERS

The government passed legislation in 1998 which has the potential to significantly expand the role of the private sector in the banking and finance sectors. Laws were also passed reducing the government's monopolies on airport and port services. Private firms continue to dominate advertising, accounting, car rental, and a wide range of consulting services. Egypt is a signatory of the 1997 WTO Agreement on Financial Services.

Banking

The government in 1998 enacted legislation authorizing the privatization of Egypt’s public sector banks. There is no announced time line for privatization of a state-owned bank. The law allows foreign ownership. Implementing regulations place a 10 percent cap on shares owned by any one party. In June1996, the People’s Assembly passed a bill amending the banking law and allowing foreign ownership in joint venture banks to exceed 49 percent, thus encouraging greater competition.

Since March 1993, Egypt has allowed existing foreign bank branches to conduct local currency operations. Two U.S. bank branches have received licenses to do so. However, most foreign bank branch operations are subject to a government economic needs test which can be used to limit foreign access to the market.

Securities

International investors are permitted to operate in the Egyptian stock market largely without restriction. Foreign brokers, including U.S. and European firms, are permitted to operate in the Egyptian stock exchange and have established or purchased stakes in brokerage companies. Egypt’s WTO financial services commitments in the securities sector provide for unrestricted market access and national treatment in the sector.

Insurance

Foreign participation in Egypt's insurance market was first permitted by a 1995 law allowing foreign companies to hold up to a 49 percent stake. Egypt passed an insurance law in 1998 which permits private sector entry into the capital of Egypt's three state-owned insurance companies. The law also removed all restrictions on minority foreign ownership of insurance firms and abolished the ban on service by foreign nationals as corporate officers. As in the banking sector, no target date has been announced for the privatization of a public sector insurance firm. Several foreign firms are awaiting approval of their applications to establish majority shares in existing joint venture firms or new companies. Egypt continues to prohibit foreign insurance companies from establishing agencies or branches. In its offer under the WTO Agreement on Financial Services, Egypt committed to relax its economic needs test in life, health, and personal accident insurance in the year 2000 and in non-life insurance in the year 2002. Egypt also made commitments to allow life and reinsurance brokerage on a cross border basis. However, foreign insurance brokerage firms still are not permitted to establish offices in Egypt.

Telecommunications

Egypt took major steps in 1998 to begin to open its telecommunications market to international participation. Two key government actions in 1998 altered the structure of Egyptian telecommunications: the March 1998 law establishing Telecom Egypt and the awarding of two mobile phone licenses to private sector-led consortia.. The March 1998 law laid the basis for changing the national telecommunications company (Arento) into Telecom Egypt, a joint stock company. Telecom Egypt currently is working to effect the managerial and legal changes needed to prepare the firm for offering to private investors, a step not expected to occur for two to three years. According to private sector analysts, Telecom Egypt also is working to improve the transparency and quality of its accounting, a key concern for potential future investors. In line with provisions of the March 1998 law, the government must maintain a majority share in Telecom Egypt and is not expected to sell more than 20 percent of the company.

The awarding of two licenses for the provision of mobile telephone services (to Misrfone and Mobinil) marked the first major entry of the private sector as operators in this sector. Telecom Egypt also awarded contracts to two firms to install and link-up pay phones. Foreign firms actively compete for contracts as Telecom Egypt works to expand and modernize its networks and switching equipment. However, in general, Telecom Egypt does not buy consulting or management services, and foreign firms do not currently play a significant operating role in Egypt's grid.

In 1998, the government indicated its intent to accede to the WTO Basic Telecommunications Agreement and the Information Technology Agreement. In addition, Telecom Egypt has been exploring ways to add value-added services to its network. These developments, and the 1998 actions which laid a base for privatizing part of Telecom Egypt, suggest that there may be growing prospects for U.S. firms in this sector.

Maritime and Air Transportation

In 1998, the government amended a 1964 law establishing the General Egyptian Maritime Organization to permit the private sector to carry out most maritime transport activities, including loading, supplying, and repairing ships. This measure ended the government's long-held monopoly in this sector. Egypt also passed a law permitting private firms to build and operate new airports.

Other Service Barriers

Egypt maintains several other barriers to the provision of services by U.S. firms. Foreign motion pictures are subject to a screen quota and limitations on the number of prints of a foreign film a distributor may import. Private and foreign air carriers may not operate charter flights to/from Cairo except with the approval of the national carrier. Only Egyptian nationals may become certified accountants.

INVESTMENT BARRIERS

Under the 1992 U.S.-Egypt Bilateral Investment Treaty (BIT), Egypt is obliged to maintain critical elements of an open investment regime, including national and MFN treatment of foreign investment (with exceptions limited by the Treaty), free financial transfers, and international law standards for expropriation and compensation. Moreover, the BIT establishes procedures for U.S. investors in Egypt to directly enforce the Treaty's obligations, including international arbitration. Generally, current Egyptian law meets or surpasses BIT standards in all categories.

A 1997 law reaffirmed basic guarantees for investors and modified the framework for investment incentives. It offers automatic approval for most new- to-market companies and particular advantages for investors in 16 sectors including agriculture, maritime, transportation, and computer software development. Automatic approval does not extend to military and related products. The 1997 law permits the General Authority for Free Zones and Investment (GAFI), now a unit of the Ministry of Economy, substantial discretion in granting investment incentives. In general, incentives are geographically based to encourage investment outside Cairo, with tax holidays up to 20 years available to companies located in parts of upper Egypt. Current tax law does not grandfather favorable tax treatment to investments in expanded capacity in existing operations.

The People's Assembly amended the Companies Law (Law 159 of 1981) in 1998 to streamline procedures for establishing a new firm. In addition, the government reaffirmed its commitment to introduce a "unified" companies law to rationalize the multiple laws addressing incorporation procedures and eligibility for tax benefits and other incentives, although it did not set a target date for this effort.

Under the WTO Agreement on Trade-related Investment Measures (TRIMs), Egypt must notify WTO members of measures that are inconsistent with its obligations under that agreement, and eliminate these measures before January 1, 2000. Egypt maintains preferential tariff rates for auto parts, which are granted in exchange for reaching specified levels of local content. Because Egypt, in its notification, stated that it had no local content provisions in the automobile sector, it appears to be in violation of its commitments under the TRIMs Agreement. U.S. companies have complained about this practice and about Egypt's prohibitive tariff rates on a number of imported parts, which makes locally-produced products such as automobiles and boilers too expensive to export.

ANTICOMPETITIVE PRACTICES

Egypt does not have a basic law prohibiting anticompetitive practices of monopolies, cartels, or conflicts of interest. Given the relatively small size of the economy, most sectors are dominated by only a few players, whether private or public. Thus, anticompetitive practices are a structural feature of the economy. Egypt is in the process of developing an antitrust law which is expected to incorporate aspects of earlier legislation on dumping, monopolies, and price fixing.

ELECTRONIC COMMERCE

There are no specific barriers to electronic commerce in Egypt. Egypt has played an important role in WTO meetings on electronic commerce, circulating a paper associating the sophistication of telecom infrastructure in lesser-developed countries with the ability to succeed in the electronic commerce environment. Nonetheless, Egypt has not yet joined the Information Technology Agreement or made basic telecommunications commitments in the General Agreement on Trade in Services (GATS).

OTHER BARRIERS

The government controls prices in the important energy and pharmaceuticals sectors. In many instances, the government has not allowed pharmaceutical prices to rise with general inflation. U.S. and other foreign firms must therefore navigate in a pharmaceutical market featuring some of the lowest drug prices in the world. Foreign companies occasionally allege discrimination in the granting of price increases. In addition, many regulations regarding manufacture and registration of pharmaceuticals are opaque and vague. Furthermore, Egypt bans the import of many pharmaceuticals in finished dosage forms, and requires foreign companies to license the manufacture and sale of imported drugs to local companies.

While Egypt’s business climate is steadily improving, the country continues its transition from a command to a market economy. Lack of transparency, excessive bureaucracy and red tape, and low-level corruption are barriers to doing business in Egypt.

EL SALVADOR

In 1998, the U. S. trade surplus with El Salvador was $77 million, compared to a $52 million surplus in 1997. U.S. merchandise exports to El Salvador were $ 1.5 billion, an increase of $117 million (8.4 percent) over 1997. El Salvador was the United States' 49th largest export market in 1998. U.S. imports from El Salvador were $ 1.4 billion in 1998, an increase of $91 million (6.8 percent) from the level of imports in 1997.

The stock of U.S. foreign direct investment in El Salvador was $221 billion in 1997, an increase of more than 26 percent from 1996.

IMPORT POLICIES

Tariffs

El Salvador is a member of the Central American Common Market (CACM), which also includes Costa Rica, Nicaragua, Guatemala, and Honduras. It is also an active member of the Central American Northern Triangle Subregional Group, formed by El Salvador, Guatemala and Honduras, which seeks to further economic, political and social integration in the region. The Northern Triangle countries hope to conclude a free trade agreement with Mexico during 1999. CACM members are working to reduce their common external tariff (CET) from the current range of 0 to 20 percent to 0 to 15 percent by the year 2000, while allowing each country to implement the necessary reductions at its own pace.

El Salvador's tariffs in January 1999 range from 0 to 16 percent for most products. Tariffs on capital goods and raw material currently are 0 to 1 percent. Intermediate goods range from 5 to 11 percent. Final goods range from 15 to 16 percent. With the exceptions of a few products, most trade within CACM is duty free.

There are no legal barriers to U.S. exports of manufactured goods or bulk, non-agricultural commodities to El Salvador. Except vehicles, alcoholic beverages, and certain luxury items, U.S. exports face tariffs ranging from 0 to 16 percent, with rates scheduled to fall to a maximum of 15 percent in July 1999.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Generally, standards have not been a barrier to the importation of U.S. consumer-ready food products. The Ministry of Health requires a "certificate of free sale" showing that the product has been approved by U.S. health authorities for public sale. Importers also may be required to deliver samples for laboratory testing, but this requirement has not been enforced. All imports of fresh foods, agricultural commodities, and live animals must be accompanied by a sanitary certificate. Basic grains and dairy products also must have import licenses.

Sanitary restrictions on poultry

Since 1992, the Ministry of Agriculture has imposed arbitrary sanitary measures that restrict U.S. poultry imports. These sanitary restrictions call for zero tolerance or negative laboratory tests for diseases such as avian denovirus, chicken anemia, and salmonella. These diseases are common worldwide and are not recognized as List "A" diseases by the International Office of Epizootics. Given the ubiquitous nature of salmonella in poultry populations throughout the world, it would be difficult for any established poultry-producing country to guarantee zero tolerance or negative lab tests on meat that has not been cooked or irradiated. These standards are applied in a discriminatory manner by El Salvador, since domestic production is not subject to the same requirements as imports. As a result of these restrictive measures, exports of U.S. poultry to El Salvador have virtually ceased. U.S. officials have met with Salvadoran agricultural officials to resolve this issue, with no success to date.

EXPORT SUBSIDIES

El Salvador offers a six percent rebate to exporters of non-traditional goods based on the f.o.b. value of the export. The following products do not enjoy this rebate: coffee, sugar, cotton and metal/mineral products. However, processed coffee can apply for the rebate, if it incorporates 30 percent of national value added tax -- for instance, if it is shipped as "gourmet" coffee, or if it is "organic" coffee. Sugar can apply if it is exported as refined sugar. Assembly plants using imported parts (maquiladoras) are eligible if they meet the criteria of adding 30 percent Salvadoran input to the production process. Although they enjoy a ten year exemption from income tax and duty free privileges, firms operating in free zones are not eligible to receive rebates. According to COEXPORT (The El Salvadoran Exporters Association), 500 of their registered 600 members received rebates in 1997. The Ministry of Finance is reported to have reimbursed 9.2 million dollars to Salvadoran exporters in rebates during 1997, and more than $ 12 million in 1998. In 1997, the government withheld 25 percent of export rebates to satisfy income tax obligations. From 1998 on, however, this withholding will no longer take place and exporters will be able to keep 100 percent of the rebate.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Patents

El Salvador's new patent legislation, (Decree Law 604), effective since November 1993, represented a significant step in terms of patent protection. However, several provisions are not TRIPs-consistent. These are: only 15 years from the date of solicitation for pharmaceutical products and processes; broad interpretation for patentable material; overly broad compulsory licensing provisions, the potential for obligatory compulsory licenses; and no protection for products in the pipeline.

SERVICES BARRIERS

El Salvador is overdue in providing to the WTO an acceptance of the Fifth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on financial services into effect.

Foreign investors are limited to 49% of equity in TV and radio broadcasting. Foreign lawyers must be graduates of a Salvadoran university. Notaries must be Salvadoran citizens.

ELECTRONIC COMMERCE

There are no known tariff or non-tariff measures, burdensome or discriminatory regulations, or discriminatory taxation affecting electronic commerce.

ETHIOPIA

In 1998, the U.S. trade surplus with Ethiopia was $36 million, a decrease of $15 million in 1997. U.S. merchandise exports to Ethiopia were $ 88 million, a decrease of $32 million (26.8 percent) over 1997. Ethiopia was the United States' 116th largest export market in 1998. U.S. imports from Ethiopia were $52 million in 1998, a decrease of $17 million (25.0 percent) from the level of imports in 1997.

The stock of U.S. foreign direct investment in Ethiopia was $35 million in 1997, an increase of almost 17 percent from 1996.

IMPORT POLICIES

Ethiopia has significantly reduced customs duties on a wide range of imports in the last several years, especially for those goods that are inputs for Ethiopian exports. In December 1998, Ethiopia reduced the maximum tariff rate to 40 percent, the number of tariff bands to seven (including the zero rate), and the average tariff rate to 19.5 percent. Ethiopia has promised further reductions in import tariffs to an average of 17-18 percent by 2001. Sales tax rates are now a uniform 12 percent for all items. Excise tax rates range up to 200 percent for liquor and spirits. Other excise tax rates of 100 percent and above are applied to luxury goods, such as perfume, large cars, and tobacco. These rates are applied equally to both domestically produced and imported goods. Ethiopia imposes no quantitative restrictions on imports and import licensing requirements do not present a notable trade barrier. Customs clearance, however, remains a hindrance to importing. Not only is the clearance process slow, but imported goods are sometimes charged at attributed values instead of at invoice values, even when the invoices have been certified by trade officials of the exporting country. The government requires that all imports be channeled through Ethiopian nationals registered as official import or distribution agents. As a result of the border dispute with Eritrea, Ethiopia has redirected nearly all of its foreign trade through the port of Djibouti.

SERVICE BARRIERS

No foreign firm may participate in the domestic banking or insurance services under Ethiopia's investment proclamation of June 1996. Other areas of investment reserved for Ethiopian nationals include air transport services for more than 20 passengers or for cargo above 2700 kilograms, forwarding and shipping agency services, rail transport services, and non-courier postal services. Professional service providers must be licensed by the Government to practice in Ethiopia. No regulations exist on international data flows or data processing use, though the Ethiopian telecommunications corporation maintains a monopoly on the provision of Internet service.

INVESTMENT BARRIERS

Although amendments to Ethiopia's investment proclamation issued in September 1998 maintained the exclusion on foreign participation in financial services (banking and insurance) and the other services noted above, they opened three formerly prohibited sectors to foreign investment: telecommunications, hydroelectric power generation (below 25 megawatts), and defense. Investment in telecommunications and defense, however, must be "in partnership with the Ethiopian Government." Another provision expands the list of services open to foreign investment to include engineering, architecture, accounting, auditing, and business consultancies.

Under the new provisions, Ethiopian expatriates and permanent residents are considered "domestic investors" and are permitted to invest in areas off-limits to other foreign investors, including retail, import and export trade, printing, cinemas, road and water transport, and other small service establishments.

OTHER BARRIERS

Foreign firms are welcome to invest in state firms being privatized by the Ethiopian Government, although in some instances the government promotes joint ventures with Ethiopian private concerns rather than outright sales to foreigners. Foreign firms participate through consultancy services preparatory to privatization as well as through tendering on advertised privatization opportunities.

There are no discriminatory or excessively onerous visa, residence, or work permit requirements for foreign investors. Foreign investors do not face unfavorable tax treatment, denial of licenses, or discriminatory import or export policies. Ethiopia's investment proclamation allows all foreign investors, whether or not they receive incentives, to freely remit profits and dividends, principal and interest on foreign loans, and fees related to technology transfer. Foreign investors may also remit proceeds from the sale of liquidation of assets, from the transfer of shares or of partial ownership of an enterprise, and funds required for debt service or other international payments. Expatriate employees may remit 100 percent of their salaries. U.S. businesses represented in Ethiopia do not encounter difficulties in the repatriation of dividends.

There are instances in which regulatory or licensing requirements have prevented the local sale of U.S. exports, particularly personal hygiene and health care products. There are currently no means of protecting intellectual property rights, patents, and/or copyrights in Ethiopia. Firms generally place notices in local newspapers to effect registration of their trademarks with the ministry of trade and industry. On occasion, U.S. firms have been reluctant to sell products or franchise the use of technology because of the lack of intellectual property rights. Ethiopia combats corruption through a combination of social pressure, cultural norms, and legal restrictions. Corruption is not a significant barrier or hindrance to investment or trade in Ethiopia.

EUROPEAN UNION

The European Union (EU) and the United States share the largest two-way trade and investment relationship in the world. In 1998, the U.S. trade deficit with the EU was $26.9 billion, an increase of $10.2 billion from the U.S. trade deficit of $16.7 billion in 1997. U.S. merchandise exports to the 15 member states of the EU were just under $150 billion, an increase of 6.2 percent from the level of U.S. exports to the EU in 1997. U.S. imports from the EU were more than $176 billion, an increase of almost 12 percent from the level of imports in 1997. The stock of U.S. foreign direct investment in the EU amounted to almost $370 billion in 1997, a greater than 9 percent rise from 1996.

IMPORT POLICIES

Import and Distribution of Bananas

Since the late 1980's Latin American countries and the United States have urged the EU to implement the "Single Market" for bananas in a manner consistent with their international obligations under the GATT (General Agreement on Tariffs and Trade) and the subsequent international agreements under the WTO (World Trade Organization). A group of Latin American countries -- Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela -- tried twice in the GATT to convince the EU to reform its discriminatory and burdensome banana rules; twice GATT panels found that EU banana rules were GATT-inconsistent (1993, 1994); twice the EU ignored those GATT panels and proceeded to extend and compound unfair and discriminatory trade barriers.

On July 1, 1993, the EU implemented a new banana import regime to replace individual Member State rules for banana imports. Elements of the new regime have caused significant adverse effects on U.S. distribution companies in the EU banana market. As a result of the EU's failure to reform its discriminatory system, a case was filed by the five complaining parties (Ecuador, Guatemala, Honduras, Mexico, and the United States) with the WTO in February 1996, and a dispute settlement panel was established to review the EU banana regime on May 8, 1996. The panel's May 22 report listed violations of fundamental WTO provisions in goods and services. The Appellate Body report, released on September 9, confirmed the panel's major findings of WTO-inconsistency of the EU regime and reversed two panel findings that had been favorable to the EU. The EU agreed to implement the WTO reports' recommendations and rulings within a "reasonable period of time," which was determined in arbitration to be the period from September 25, 1997 to January 1, 1999.

On January 14, 1999, a revised EU banana regime went into effect. The revised regime maintains WTO-inconsistent elements both in the structure of the market (goods) and licensing (services) regimes. The U.S. Government continues to press the EU to implement a new regime that is WTO-consistent, and sought agreement to return to the original WTO panel for a judgement on the EU regime within the "reasonable period of time" provided for compliance. The EU refused efforts to address both goods and services aspects of the case with the original panel that would have permitted completion of the process before the end of the implementation period. As no consistent regime was in place by the end of the reasonable period, the United States has requested the right to withdraw concessions under Article 22 of the Dispute Settlement Understanding (DSU). The EC has exercised its WTO right to ask for arbitration on the amount of concessions to be withdrawn. This arbitration, under DSU rules, is scheduled to conclude by March 2, at which time the United States may withdraw concessions.

EU Implementation of Uruguay Round Grain Tariff Commitments

During the Uruguay Round, the United States obtained a tariff concession from the EU establishing a ceiling on the duty that could be charged on grain. The ceiling is based on the duty-paid import price of grains into the EU. However, the EU subsequently established a reference price system for grain imports. The reference price system deprived U.S. exporters of the significant duty reductions that they expected to receive on high-value grains, such as malting barley and packaged rice. The United States held unproductive consultations with the EU under WTO dispute settlement procedures in September 1995 and requested a WTO Panel later that month. The United States and the EU subsequently reached an agreement under which the EU committed to establish a cumulative recovery system (CRS) for duty underpayments and overpayments on brown rice, and a side commitment to establish a system that would permit imports of a limited amount of malting barley at 50 percent or less of the duty that would otherwise be charged. After the threat of further WTO action, the EU implemented these concessions in mid-1997.

The EU reauthorized the regulations regarding 1997 and 1998 imports of malting barley, and is in the process of reauthorizing imports of one hundred thousand metric tons of malting barley for 1999 and 2000. On the CRS, the United States and the EU signed a letter of understanding on duty treatment for husked rice in December 1998 for one year. However, consultations on the subject are still ongoing.

Implementation of EU Import Quotas for U.S. Rice

As part of the concessions made to the United States as compensation for the accession of Finland, Austria, and Sweden to the EU, the EU agreed to implement tariff rate quotas (TRQ) for imports from the United States of 38,721 metric tons of milled rice at zero duty and 7,642 metric tons of brown rice at an ECU 88/MT duty effective January 1, 1996. In late 1997, the EU, with the consent of the United States, implemented a one year quota. In 1998, the U.S. allocation system, named AARQ (Association for the Allocation of Rice Quotas, Inc.) came into operation. EU Commission Regulation (EC) No. 648/98 of March 23, 1998 outlines the quantities of milled and husked rice originating in the United States which can be imported through the AARQ under the TRQ in 1998, 1999, and 2000. Quantities for these 3 years exceed 38,721 MT and 7,642 MT for milled and brown rice, respectively, since they contain the 1996 TRQ volumes, spread out over 1998, 1999 and 2000.

Customs Classification of Information Technology Products

Increased tariff rates resulting from the reclassification by the European Commission and EU Member State customs administrations of certain local area network equipment and multimedia personal computers have raised concern with information technology equipment manufacturers. On February 25, 1997, the WTO Dispute Settlement Body established a WTO Dispute Settlement Panel to examine whether the following measures were inconsistent with the EU's obligations under Article II of the GATT 1994: (1) Regulation No. (EC) 1165/95, which reclassifies certain LAN adapter cards from category 8471, "automatic data processing machines and units thereof," to category 8517, "telecommunications apparatus"; (2) the actions of customs authorities in Member States in reclassifying and increasing tariffs on imports of all types of LAN equipment - including hubs, in-line repeaters, converters, concentrators, bridges and routers; and (3) the actions of customs authorities in Member States in reclassifying and increasing tariffs on imports of PCs with multimedia capacity. On March 20, 1997, the dispute settlement body modified the terms of reference of the Panel to include U.S. complaints against Ireland and the UK.

The Panel's final report, released on February 5, 1998, found that the tariff concessions on "automatic data processing machines" (category 8471) in the EU Uruguay Round tariff schedule apply to computer networking equipment. Since the EU had been applying higher tariffs to computer networking equipment than the tariffs provided for in category 8471, the EU was found in violation of its tariff obligations.

On the EU tariff treatment of multimedia PCs, the Panel found that (1) PCs that incorporate a TV tuner can be regarded either as PCs capable of receiving TV or televisions that can also function as computers, and (2) it could not make a decision in the United States' favor on the basis of the evidence before it. However, the United States raised this issue due to concerns that the EU might treat any PC with multimedia capabilities as a television for tariff purposes.

The EU appealed the Panel's ruling. On June 5, 1998, the WTO Appellate Body overturned the original findings of the panel by finding in the EU's favor on most points. However, the commercial results the United States wanted to achieve have substantially been met in the Information Technology Agreement (ITA). There, the EU has agreed to lower tariffs on LAN equipment by the year 2000 (see below).

Tariffs on Information Technology Products

The EU is one of the signatories of the Information Technology Agreement of 1997, which eliminates tariffs on over $600 billion worth of world trade in computers, telecommunications equipment, semiconductors, and other information technology products. The EU will eliminate tariffs on all ITA products by the year 2000. The United States and EU are working together with other countries in the WTO to expand product coverage through the conclusion of an additional tariff and nontariff liberalization package on a broader range of related information technology products (ITA II) by early 1999.

Restrictions Affecting U.S. Wine Exports to the EU

The United States and EU have an active two-way trade in wine, although EU exports to the United States are roughly ten times the size of U.S. exports to the EU. Since the mid-1980's, U.S. wines have been permitted entry to EU markets by means of a series of annual extensions to temporary exemptions from EU wine making regulations. These regulations require imported wines to be produced with only those oenological practices (i.e. wine making practices) which are authorized for the production of EU wines. Without these "derogations," the majority of U.S. wines would be immediately barred from entering the EU. This leaves in doubt both the foothold U.S. exporters have secured in the EU market and the prospects for export expansion in the future. The United States seeks assurance of long-term access and growth potential for U.S. wine exports to EU markets.

Recently, as a result of bilateral discussions, the EU derogations have been renewed until 2003, with a Commission review in 2000. The EU has granted derogations for certain wine-making practices to other third countries that it has not granted to the United States The United States believes these derogations for additional practices should also be granted to U.S. producers on a most-favored-nation basis. However, a range of other barriers exists. The United States also is concerned about the EU's regulation 881/98 adopted to protect certain "traditional expressions" associated with wine and liqueur production. Traditional expressions are, for the most part, adjectives used with certain other expressions (often geographical indications) to identify descriptive attributes of wine or liqueur. These terms are granted trademark protection in the EU, although 1) third country industry does not have a means to apply directly for such protection and 2) in many cases the terms are highly generic (e.g. "ruby" and "tawny" are protected "traditional terms"). The United States does not recognize the concept of traditional terms, nor is this subject covered under TRIPs. EU tariffs on wine are also of concern.

The United States has held a series of consultations with the EU on these and other wine-related issues. The main U.S. objective in the consultations is to ensure that the EU market remains open to U.S. wine and that U.S wine exports can compete fairly on the EU market. In late 1997, the United States proposed broad-ranging discussions on wine, potentially to include such issues as U.S. and EU oenological practices, the use of semi-generic designations in the United States, and tariffs. After consultation with industry, the United States held preliminary discussions with the EU in July and September 1998 to establish a basis for negotiation of a new Wine Agreement. The United States hopes negotiations can begin in early 1999.

Market Access Restrictions for U.S. Pharmaceuticals

U.S. pharmaceutical companies have difficulty with consistent market access throughout the EU because of price, volume and access controls placed on medicines by national governments. The pharmaceutical industry sees these controls as undermining the value of patents, distorting competition among medicines and across national markets, limiting access by patients to innovative products, and diminishing the contribution of Europeans to research and development.

While the EU's single market ensures that pharmaceuticals, like other goods, can move freely across borders among EU countries, member state public health authorities impose strict price controls on pharmaceuticals. As a result, since controlled prices vary greatly from one country to another, middlemen engage in parallel trading, profiting at pharmaceutical companies' expense by buying drugs in countries where the price is lower and selling in member states where the price is set at a higher level. This undermines the need of pharmaceutical companies to recoup the expense of their research and development.

Austria: Some U.S. pharmaceutical companies have complained about restricted access to the Austrian market. A U.S. firm seeking to market a product in Austria must first obtain the approval by the Austrian Social Insurance Holding Organization (Hauptverband der Sozialversicherungsträger). According to critics, the non-transparent procedures by which the Hauptverband approves drugs for reimbursement under Austrian health insurance regulations has perpetuated a closed market system favoring established suppliers. Pharmaceuticals not approved by the Hauptverband have higher out-of-pocket costs for Austrian patients and therefore suffer a competitive disadvantage vis-a-vis approved products. One U.S. pharmaceutical firm has raised Austria's practices with the European Commission as a possible violation of the EU transparency directive.

The European Transparency Directive which will become effective in Austria in 1999, further complicates the issue. Allegedly to fulfill its obligations under the Transparency Directive, the Hauptverband has designed a contract which sets out its approval procedures in general terms. By signing the contract, a firm agrees to be bound by the decisions of the Hauptverband, effectively waiving its rights of appeal under the provisions of the Transparency Directive. About 65 percent of the pharmaceutical suppliers in Austria have signed the contract, though a number of major U.S. firms have not. Non-signatories are concerned that they may be the subject of harassment on the part of the government but this has not materialized. Other U.S. pharmaceutical firms signed the contract in its present form, and approve its content.

Belgium: In Belgium, there are significant delays in providing market authorization and approval of pricing and reimbursement for new pharmaceutical products. According to industry sources, the current average duration for these processes is more than 1000 days, in contrast to EU requirements of a maximum 390 days for the entire process. (Directives 65/65, 93/39 for Marketing Authorization, Directive 89/105 for Transparency/Pricing and Reimbursement). One industry survey shows that the mean delay for Price and Reimbursement exceeds 500 days, well in excess of the 180 days required by the EU. The lengthy process to obtain marketing approval in Belgium shortens considerably the period of patent protection. Under the centralized European procedure, mandatory for new products, the supplementary protection certificate period depends on the date of first approval. U.S. companies are disproportionately affected by procedural delays as they are among the most active in developing and bringing to market innovative new products. The Belgian Government reportedly is considering new legislation to bring the reimbursement period into line with the EU Directive, but it is not clear when it will be implemented.

Pharmaceuticals in Belgium are also under strict price controls. There is a price freeze on reimbursable products and a required price reduction on drugs on the market for fifteen years. A four percent turnover tax is charged on all sales of pharmaceutical products. Control of prices for reimbursed and non-reimbursed products affect not only in-country sales, but exports sales to third markets for which the Belgian price is the reference price.

Spain: Pharmaceuticals and drugs still must go through an approval and registration process with the Ministry of Health requiring several years unless previously registered in another EU Member State or with the equivalent EU body, in which case the process is shortened to a few months. Vitamins are covered under this procedure; however, imports of other nutritional supplements are restricted, and they are dispensed only at pharmacies. This has an impact on U.S. nutritional supplements exporter's efforts to develop the Spanish market.

Ban on Fur from Animals Caught in Leg-hold Traps

In November 1991, the EU adopted a regulation banning the use of leg-hold traps in the EU. The regulation also requires a ban on imports of fur and fur products of certain species from countries which either do not ban leg-hold traps or do not conform their trapping practices to internationally agreed humane trapping standards. After over eight years of discussions on this topic, the United States and the EU signed an agreed minute on humane trapping standards on December 18, 1997, in parallel with an EU agreement with Canada and Russia. Together, these instruments involve the countries accounting for the vast majority of international trade in fur. The EU/Canada/Russia agreement is still undergoing domestic approval procedures. The EU completed its approval of the U.S.-EU agreed minute on July 15, 1998. In the United States, the agreed minute does not require formal treaty ratification procedures - competent authorities in the United States have already begun to undertake activities described in the agreed minute. The agreed minute should permit continuing access of U.S.-sourced fur and fur-products to the European market. Nevertheless, some problems could still emerge as the EU has not yet ended its requirement for certification of all fur imports. USTR will continue to monitor closely developments on this issue.

STANDARDS, TESTING, LABELING AND CERTIFICATION

EU Member States still have widely differing standards, testing and certification procedures in place for some products. These differences may serve as barriers to the free movement of these products within the EU and can cause lengthy delays in sales due to the need to have products tested and certified to account for differing national requirements. Nonetheless, the advent of the "new approach," which streamlines technical harmonization and the development of standards for certain product groups, based on minimum health and safety requirements, generally still points toward the harmonization of laws, regulations, standards, testing, quality and certification procedures in the EU. The European standardization process is still closed to U.S. firms' direct participation, although European standards bodies can be sympathetic to U.S. concerns when approached. There is also an increasing trend in the EU to adopt industry or environment standards before international standards-making initiatives have been completed (see 3rd generation wireless, wine and aircraft certification discussions below).

Standardization

Standardization continues to play an increasingly significant role in U.S.-EU trade relations, as evidenced by the Transatlantic Business Dialogue (TABD) adopted goal of "approved once accepted everywhere in the Transatlantic Marketplace." The United States Department of Commerce anticipates that EU legislation covering regulated products will eventually be applicable to 50 percent of U.S. exports to Europe. Given the enormity of this trade, EU legislation and standardization work in the regulated areas is of considerable importance. Although there has been some progress in implementation, a number of problems related to this evolving EU-wide legislative environment have caused concerns to U.S. exporters. These include lags in the development of EU standards; lags in the drafting of harmonized legislation for regulated areas; inconsistent application and interpretation by Member States of the legislation that is in place; overlap among directives dealing with specific product areas; grey areas between the scope of various directives, and unclear marking and labeling requirements for regulated products before they can be placed on the market. While many such problems may not constitute deliberate "trade barriers," their existence can impede U.S. exports to the EU.

Mutual Recognition Agreements

The EU is implementing a harmonized approach to testing and certification as well as providing for the mutual recognition within the EU of national laboratories designated by Member States to test and certify a substantial number of "regulated" products. The EU encourages mutual recognition agreements between private sector parties for the testing and certification of non-regulated products. One difficulty for U.S. exporters is that only "notified bodies" located in Europe are empowered to grant final product approvals of regulated products. While there are some laboratories in the United States which can test regulated products under subcontract to a notified body, the limited number of such labs means that such subcontracting procedures are unlikely to provide sufficient access for U.S. exporters. Moreover, these labs cannot issue the final product approval but must send test reports to their European affiliate for final review and approval, which delays the process and adds costs for U.S. exporters.

The United States and the EU have negotiated a Mutual Recognition Agreement (MRA) for several important sectors as a means of addressing this issue. MRAs will permit U.S. exporters to test and certify their products to the requirements of the EU in the United States, and vice versa. The U.S.-EU MRA entered into force on 1 December 1998. The MRA provides for a transition phase ranging from 18 months to 3 years, depending on the specific sector. Under the recently agreed Trans-Atlantic Economic Partnership (TEP), the United States and EU plan to negotiate MRAs in additional sectors in 1999.

GMOs Product Approval

Despite EU Commission approval in 1998 of several products of modern biotechnology, the lengthy and highly unpredictable approval process for genetically modified organisms (GMO) has affected U.S. exports of corn and soybeans and threatens to affect an even broader range of products in 1999. Biotechnology continues to be a political issue in several member states which retain an active role in the EU approval process, with scientific and objective attitudes pushed to the side by emotional and extremist positions. Prospects for improvement appear dim at this time.

Approval of "viable" GMO's --including seeds and grains-- for environmental release and commercialization is governed by directive 90/220, the subject of internal EU executive and parliamentary debate as it undergoes revision, a process that may take several years. In the meantime, the approval process is slow and unpredictable, and several member states have defied final EU approvals, banning GMO's or suspending approvals without presenting any scientific justification. The Commission has shown great reluctance to prosecute these violations of EU law. Several products have been under review for over three years, as compared to an average six to nine month process in Canada, Japan and the United States. U.S. exports of corn to Spain and Portugal in 1997 were reduced to a fraction of historical levels due to tardy approvals. Exports in 1998 may even fall to zero.

A new directive that would cover use of GMO's in livestock feed, "Novel Feeds," is circulating in the Commission but has not yet been published. Another directive on seeds for planting has passed the Council but has not yet been published. The United States recognizes the right of the European Union to ensure products introduced into the market are safe and do not harm the environment. However, the EU process has become highly politicized and the addition of procedural steps and new, additional scientific reviews at the conclusion of an already intensive scientific review process places in question the EU impartiality in these matters. Even when products are approved, market access for products of modern biotechnology is not guaranteed. France, Austria and Luxembourg have imposed marketing bans on GMO products, which run counter to EU regulations.

Labeling

In addition to directive 90/220, in May 1997, the EU adopted the “Novel Foods Regulation”, which governs food safety assessments and labeling for genetically-modified foods. The regulation requires labeling of all new processed foods and food ingredients, including those made from GMOs. Neither the novel foods regulation, nor directive 90/220 makes clear which products processed from GMOs must be labeled.

In September 1998, an EU law provided for labeling of foods processed from Bt-corn and herbicide-tolerant soybeans became effective. First proposed a year earlier, the law fails to specify any threshold for incidental contamination, testing method or list of exempted products. Indeed, one of the issues at present in some member states is the determination of the threshold level that would trigger the labeling requirement. Austria has taken a leading position in advocating a threshold level (0.5-1.0 percent GMO content) lower than what the United States considers economically feasible. An ad hoc committee was supposed to have completed such details by the time of implementation in September 1998, but has made little progress. It is expected that whatever is eventually adopted for corn and soybeans will provide the basis for labeling of other GMO foods. Some European food processors have switched to non-U.S. soybeans to avoid confusing labeling regulations for GMO's.

In the United States, companies are not required to label products simply because they are produced through biotechnology. The United States believes that such labeling is unnecessary, in the absence of an identified and documented risk to safety or health. However, most European officials, including those that are pro-biotechnology, have come to believe that labeling of all GMOs, regardless of risk, is necessary to ensure consumer acceptance.

Ban on Growth Promoting Hormones in Meat Production

For almost 10 years, the EU has banned imports of beef produced with growth promoters. The United States launched a formal WTO dispute settlement procedure in May 1996 challenging the EU ban. The WTO Appellate Body (AB) upheld the original WTO Panel finding that this ban is inconsistent with WTO Agreement on Sanitary and Phytosanitary (SPS) measures and calls for the EU to comply with its WTO/SPS obligations. The AB clearly confirms the earlier Panel finding that the EU ban was imposed and maintained without evidence of health risks posed by eating beef from cattle treated with growth promoters, and despite scientific evidence showing such meat to be safe.

The EU announced in March 1998 that it would implement the AB finding. A WTO arbitrator consequently decided that the EU needed 15 months to bring its measures into conformity with its WTO obligations, instead of the four years it argued for, and that it was not necessary to conduct another risk assessment. The 15 months started in February 1998, with the adoption of the Appellate Body report. The reasonable period will expire on May 13, 1999. The EU currently is undertaking additional studies on hormone usage in beef production. These studies are not expected to be completed before the end of the "reasonable period of time" provided for WTO compliance. The United States is seeking early discussion with the EU regarding how the EU will meet its WTO obligations.

Poultry Regulations

The EU continues to refuse considering the use of anti-microbial treatments in poultry production. As a result, U.S. poultry exports to the EU have been blocked since April 1, 1997, representing a loss of $50 million annually to U.S. poultry exporters. In October 1998, the EU published an opinion on anti-microbial treatments, which, although more tolerant of some forms of treatment, does not recommend the use of chlorinated water, the primary means employed in the United States to assure safety of poultry products from microbial contamination.

Besides this issue of anti-microbial treatment, there is another issue at stake in France regarding poultry production: the United States continues to oppose the French ban on U.S. poultry, which has been in effect since the early 1960's. The French prohibition on U.S. poultry is based on U.S. poultry feed practices, practices which the United States believes to be entirely safe.

Specified Risk Materials Ban

On July 30, 1997, the European Union adopted a ban on the use of Specified Risk Materials (SRMs) for use in food and feed and medical, pharmaceutical, cosmetics and other industrial products. Specified risk material is defined as (a) the skull, including the brains, eyes, tonsils and spinal cord of cattle, sheep, and goats aged over 12 months, and (b) the spleens of sheep and goats. This measure results from EU concerns over the transmission of BSE, or bovine spongiform encephalopathy, commonly known as "mad cow" disease. The ban, originally scheduled to go into effect on January 1, 1998, was subsequently deferred several times, most recently to January 1, 2000. The decision also prohibits the use of the vertebral column of cattle, sheep, and goats for the production of mechanically covered meat, and allows for a derogation for the feeding of fur animals. Industry sources estimate that the potential trade effect of the ban could exceed $20 billion if all products currently covered are ultimately covered by the ban.

Beyond the direct trade impact of the ban which is potentially significant, the SRM ban raises a number of concerns with respect to WTO requirements, including those set out in the Sanitary and Phytosanitary Agreement. It fails to recognize regional disease differences in animal disease status; and it fails to account for available scientific information and advice relating to the control of bovine spongiform encephalopathy (BSE) and other transmissible spongiform encephalopathies (TSE) in products of animal origin. As a result, the ban is unnecessarily restrictive. For example, products of the United States and other trading partners, which have no evidence of BSE, are currently affected.

In November 1998, the EU Commission developed a proposal to address the overall, long term problem of TSEs, and proposed measures which would be implemented pending the formal adoption of the TSE proposal under co-decision with the EU Council of Ministers and the EU Parliament. Both would apply only to the production and placing on the market of live animals and products of animal origin which are destined for use in human food, animal feed or fertilizers, and explicitly exclude cosmetics and pharmaceuticals. Provisions of the two measures are based on recommendations of the International Office of Epizootics (OIE) for BSE. The TSE proposal could take up to two years to be adopted. On December 15, EU Agriculture Ministers rejected the interim measures proposal, but agreed to postpone the SRM ban until January 1, 2000.

EU Approval of Third Country Establishments Exporting Animal Products

The implementation of a 1992 EU directive, requiring that practically all animal products imported in the EU have to be sourced from third country establishments approved by the European Commission, has effectively resulted in trade losses for U.S. companies. The approval process entails that competent third country authorities compile for each product category a list of establishments and guarantee that these establishments meet EU animal and public health requirements. This list is submitted to the Commission services for approval. All amendments to the existing list, including additions, deletions, name changes also have to be submitted to the Commission. The Commission, however, has not devoted the necessary resources to process submitted lists in a timely manner.

As a result, companies with export opportunities have had to wait for months before being added to an approved list and have thus been cut off from the European market. This problem has been especially acute in the dairy sector, but as the directive is further implemented to also cover important U.S. export products such as animal casings and pet food, similar trade disruptions in these sectors are likely in the near future.

Veterinary Equivalency

The United States and the European Commission concluded negotiations on a veterinary equivalency agreement in April 1997 after over four years of often contentious discussions. This agreement translates the principles of the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures into practical and workable terms. The agreement establishes a framework for the exporting country to make an objective demonstration to the importing country that its sanitary measures achieve the importing country's appropriate level of protection when such measures differ. By establishing clear criteria for reaching a determination of equivalence, this agreement will facilitate trade in live animals and animal products. When implemented, the agreement will establish the terms of trade for nearly all animal products, including dairy products, pet food, fishery and egg products, between the United States and the EU, representing over $3 billion annually.

The EU Council of Agriculture Ministers approved the Agreement in principle on March 16, 1998 contingent on U.S. publication of a proposed final rule in the U.S. Federal Register on the EU animal disease status. The final rule on recognition of freedom from Newcastle disease, foot and mouth disease and rinderpest in the EU was published in November 1998. The proposed rule on the EU status for classical swine fever is expected to be published in late spring of 1999.

Proposals on Aflatoxin Limits

In July 1998, the EU adopted a regulation harmonizing maximum levels of aflatoxin in peanuts, tree nuts and dried fruits, cereals and milk, effective January 1, 1999. At the same time, a directive specifying sampling methods to be used after 31 December 2000, was adopted. The United States considers the maximum limits unjustifiably low in relation to consumer exposure and risk and believes that these levels will lead to trade disruptions without a corollary increase in consumer protection. Also, the sampling procedure will increase handling costs with no appreciable reduction of aflatoxin contamination in consumer products.

Market Access for Gas Connector Hoses in Europe

A U.S. producer of gas connector hoses has experienced difficulties in obtaining market access in some Member States for its products due to design-restrictive standards that arguably have no bearing on the safety and performance of the product. The problem has been extended to European markets generally with the establishment of a CEN (European Committee for Standardization) technical committee to begin work on a harmonized standard for Europe. Reports of initial technical discussions within the committee indicate consideration is being given to standards containing design-restrictive requirements. The initiation of work on a European regional standard results in a "standstill" on standards work in individual Member States and thus can delay or, if it results in unnecessarily restrictive standards, prevent improved access to EU markets. The U.S. Government has been actively pursuing a resolution to this problem and in cooperation with industry will be closely examining the committee's progress. There has been no substantial progress since last year.

Waste Management

European Commission officials are working on draft proposals for a directive on batteries and a directive on Waste from Electrical and Electronic Equipment. While the United States supports the objectives of the drafts to reduce waste and the environmental impact of discarded products, the manner in which these directives are written raise a number of important trade policy concerns. In particular, the draft directives’ approach to banning certain essential materials (such as lead, mercury and cadmium) and mandating specific design standards appears to lack adequate scientific and economic justification and may serve as unnecessary barriers to trade. In addition, imposing the sole responsibility on the manufacturer for the collection and recycling of used products is unnecessarily burdensome.

The ban on nickel-cadmium in the current draft of the directive on batteries and accumulators appears to lack adequate scientific or economic justification and is unworkable for industry in its current form. The battery industry presented a draft voluntary agreement in October 1998 to increase the rate of collection and recycling, but has yet to receive a response from DG-XI.

The draft directives are scheduled to be reviewed and voted on by the Commission in early 1999. If adopted, the proposals would then move to the Council and Parliament sometime in mid-to-late 1999. The United States Government will continue to monitor closely these proposals.

The United States is also concerned about a draft directive on the disposal of end-of-life vehicles. The directive contains substance bans that do not appear to be justified by scientific risk assessments, and which would, if implemented, impose onerous burdens on vehicle producers.

Voluntary Eco-labeling Program

On March 23, 1992, the EU Council of Ministers approved an EU-wide eco-labeling scheme. The scheme is a voluntary program which permits a manufacturer to obtain an eco-label for a product when its production and life-cycle meet general and specific criteria established for that particular product. The program is intended to encourage consumers to purchase products according to their overall environmental performance. EU eco-label criteria have been adopted and published for twelve consumer product categories: washing machines, dishwashers, soil improvers, tissue paper products, laundry detergents, light bulbs (single-ended and double-ended), paints and varnishes, bed linens and t-shirts, photocopy paper, and refrigerators. The Commission is also developing criteria for textile products, detergents for dishwashers, personal computers and footwear, and has completed studies in six other areas, including converted paper products (e.g. notepads and envelopes).

U.S. companies have complained about the non-transparency of certain aspects of the eco-labeling development process.

A Commission proposal to revise the EU scheme faltered in 1998 due to Council and Parliament disfavor and the proposal is back with working-level officials in the Commission. EU and U.S. experts met in October 1998 and agreed to the establishment of a bilateral technical working group to discuss broad eco-labeling issues. The group pledged to have ongoing contact and to meet face-to-face at least once a year.

Packaging Labeling Requirements

In 1996, the Commission put forward a proposed directive that would establish marking requirements for packaging, to indicate recyclability and/or reusability. The United States has expressed two potential concerns with this directive. First, to the extent that the EU new marking requirements differ from other marks widely used in the United States and being developed in the ISO, the United States is concerned that packaging, marketing and distribution operations will become more complicated and costly for both U.S. and European firms wishing to sell their products abroad, without achieving any concomitant environmental benefit.

The second concern is related to Article 4 of the proposed directive, which would prohibit the application of other marks to indicate recyclable or reusable packaging. Based on U.S. experience, this requirement is likely to pose a particular problem for glass and plastic containers, as it would require companies to create new molds solely for use in the European market. Discussions underway in the ISO may go a long way to resolving the potential problems, especially as the Commission and the European parliament have indicated their willingness to review the proposed EU marks in light of an eventual ISO agreement. As ISO has not come forward with marking requirements, the European parliament went ahead and drafted its own marking requirements which will be discussed internally prior to the vote in February 1999 and the publication of the European Parliament's proposed amendment in spring 1999. The U.S. Government will continue to monitor this issue as it proceeds through the legislative process.

Metric Labeling

The 1980 Directive adopted to harmonize systems of measurement throughout the European Union according to the international metric system mandates metric-only labeling on most products entering the EU from January 1, 2000. An exception is made in a few specific areas such as air and sea transport in all member states, distances and draught beer in the United Kingdom and Ireland. Exporters, both European and American, have publicly voiced their objections, citing the costs of complying with conflicting EU metric-only and U.S. mandatory dual labeling requirements. In February 1999, the European Commission proposed to amend the Directive by postponing its implementation date by ten years, thus extending until 2009 the transitional period during which labeling of measurement in Europe can be indicated in both metric and American units. This amendment must be approved by both the EU Council of Ministers and the European Parliament before it can go into effect.

New Aircraft Certification

The United States continues to be concerned by the possibility that European aircraft certification standards are being applied so as to impede delivery of qualified aircraft into Europe. Processes and procedures currently employed by the European Joint Aviation Authorities (JAA) appear cumbersome and arbitrary, and in any event cannot be uniformly enforced. For example, France continues to insist on an exception to the JAA's decision on certification of Boeing's new model 737 aircraft that limits the seat density of aircraft sold to carriers located in France. The JAA decision itself took an inordinately long time, during which additional conditions were imposed progressively on the U.S. firm. The United States desires a transparent, equitable process for aircraft certification that is applied consistently on both sides of the Atlantic according to the relevant bilateral airworthiness agreements.

Hushkit or New Engine Modified and Recertificated Aircraft

In 1997, pressure on EU Airport Authorities to reduce noise levels resulted in a Commission effort to develop an EU-wide noise standard. When it became clear that it would be politically impossible to agree on such a standard due to the high costs it would impose on EU manufacturers and airlines, the Commission and Member States developed an alternative proposal. That proposal effectively passes these costs to U.S. and other non-EU air carriers and to U.S. manufacturers of noise reduction technology (hushkits) and new engines for older U.S. aircraft. The Commission has provided no scientific analysis demonstrating that the regulation would actually reduce noise at European airports. The proposed regulation establishes a design standard that restricts the operation of aircraft which otherwise fully comply with the performance standard adopted by the International Civil Aviation Organization to which the EU Member States agreed. The regulation would restrict the operation of aircraft that have been modified with hushkits, no matter how quiet, or refitted with new engines that do not have a 3:0 or greater "bypass ratio". "Bypass ratio" is not a reliable indicator of aircraft noise, but this distinction would still permit the operation of EU-produced engines, which compete with those restricted by the regulation, that have a “bypass ratio” of 3.1:1.

Acceleration of the Phase-outs of HCFCs

The European Commission adopted a proposal in July 1998 to amend EU Regulation 3093/94 on substances that deplete the ozone layer. The United States Government actively opposed early drafts, which included phase-outs of some hydrochlorofluorocarbons (HCFCs) by 2000 or 2001, and would have disadvantaged U.S. producers while not necessarily benefitting the environment. The final draft, however, adopted a January 1, 2003 phase-out date for HCFCs used in refrigerated foam—in line with U.S. law—thereby protecting the export to the EU of U.S. refrigeration equipment.

The Council agreed to the 2003 date in adopting its Common Position in late December 1998. The Parliament, which voted to accelerate the date to 2002 in mid-December, will discuss the issue again in light of the Council common position and is expected to reverse its earlier decision and agree to the 2003 date. The U.S. Government will continue to monitor this proposal as it proceeds through the final stages of the legislative process.

Triple Superphosphate

The EU imposes a 93 percent water solubility standard for the fertilizer product triple superphosphate (TSP) to be marketed as “EC-Type Fertilizer.” TSP having a lower percentage water solubility can be sold in the EC, but without the “EC-Type” label. Scientific studies done to date on crops typically cultivated in EU countries show that water solubility rates of 90% or higher are not necessary to gain the agronomic benefits associated with adding TSP (or other phosphate fertilizers) to the soil. Substantially lower water solubility rates for TSP are more than adequate.

The effect of this unjustified standard is to restrict international trade in TSP and to deprive the EU consumers of TSP of the benefits of increased competition that would result if this unnecessary technical barrier to trade were eliminated. The United States has requested a justification for this standard in light of scientific opinion and trade rules.

Member State Practices

Some EU Member States have their own national practices regarding standards, testing, labeling, and certification. A brief discussion of the national practices of concern to the United States follows:

Greece: Greece insists on testing U.S. wheat shipments for Karnal Bunt disease. It will not accept USDA certificates stating that wheat comes from areas free from the disease. The testing method used provides a high evidence of false positive results and thus serves as a de facto ban on imports of U.S. wheat.

Italy: Italy's interpretation of EU sanitary and phytosanitary requirements has caused, or threatened to cause, problems for the following U.S. agricultural exports: processed meat products, wood products, poultry products, game meat, ingredients for animal feed, and seafood. In most cases, problems are limited to clarifying and satisfying import certification requirements that differ slightly from other EU countries. In other areas, such as game meat, imports are restricted pending further action by the EU Commission to identify approved exporters. In addition, Italian imports of bull semen are restricted because of qualitative import standards for bull semen which favor domestic animals as well as high testing and registration fees.

Spain: In recent years, the transparency of Spain's product standards and certification processes has improved. Although Spain adapted its national regulations to conform to EU directives, there is still some uncertainty as to whether the earlier exemption from homologation and certification requirements for equipment imported for military use is still valid.

GOVERNMENT PROCUREMENT

Discrimination in the Utilities Sector

In 1990, in an effort to open government procurement markets within the EU, the EU adopted a utilities directive covering purchases in the water, transportation, energy, and telecommunications sectors. The directive, which went into effect in January 1993, requires open, objective bidding procedures (a benefit for U.S. firms) but discriminates against non-EU bids absent an international or bilateral agreement. The directive’s discriminatory provisions were waived for the heavy electrical sector in a Memorandum of Understanding (MOU) between the United States and the EU, signed in May 1993.

On April 15, 1994, the United States and the EU concluded a procurement agreement that expanded upon the 1993 MOU. The 1994 agreement extended non-discriminatory treatment to over $100 billion of procurement on each side, including all goods procurement by all EU subcentral governments, as well as to selected procurement by 37 U.S. states and seven U.S. cities. Much of the 1994 agreement is implemented through the WTO government procurement agreement, which took effect on January 1, 1996. The discriminatory provisions of the utilities directive remain in effect in the telecommunications sector.

Member State Practices

Some EU Member States have their own national practices regarding government procurement. A brief discussion of some of the national practices of particular concern to the United States follows:

Austria: While the Austrian Government adheres to the WTO (GATT) Agreement on government procurement and does not have "buy national" laws, some major contracts are negotiated by invitation, and limited tenders and offset agreements are common in defense contracts. In 1998, a U.S. aircraft manufacturer was denied the sale of a helicopter due to pressure from a European competitor, even after the Austrian Government had approved the U.S. bid (the tender will be rebid). This pro-European bias also appears to play a role in privatization decisions, where local politicians have sometimes sought to discourage foreign bids by calling for "Austrian solutions" to privatization.

In common with other EU member states, the Austrian Government makes offset agreements a standard operating practice in defense contracts. Since 1978, the GOA has requested offsets for all military equipment purchases from foreign suppliers in excess of 300 million Austrian shillings (about USD 25 million at current exchange rates.) Theoretically, the offset allows the government to distinguish between bidders who are otherwise equally qualified. Because offsets are used to promote Austrian exports and to stimulate foreign investment in Austria, critics view the bidding system on defense contracts as vulnerable to distorting the principle of best bidder being awarded the contract.

Denmark: The Danish Government, its institutions, and entities owned by it are obligated to apply environmental and energy criteria on an equal footing with price, quality and delivery terms in their procurement of goods and services in a manner consistent with EU procurement rules. In practice, this will likely mean specification of products bearing the EU "eco-label" or products produced by firms with a satisfactory "ecoaudit." The environmental/energy requirement is likely also to spread to procurement by lower level governmental entities. The trend toward specification of environmentally certified products in government procurement raises concerns, given broader U.S. concerns with the EU ecolabeling scheme (see above).

Germany: Through four years of German implementation of the EU Utilities and Remedies Directive, U.S. firms continued to allege irregularities in public procurement bid procedures. Under the terms of the 1993 U.S.-EU Memorandum of Understanding on government procurement (and since January 1, 1996, the WTO Government Procurement Agreement), the system established for reviewing bid awards covered by the EU Utilities Directive was also made available to U.S. firms bidding on supply contracts in the heavy electrical equipment sector. The review mechanism provided an administrative means for challenging procurement practices in the electrical utilities sector, considered by many to be relatively closed to foreign suppliers. This review mechanism proved ineffective because it did not contain effective remedies.

In October 1995, the European Commission formally challenged the adequacy of Germany's implementation of the EU Remedies Directive. Moreover, in April 1996, the United States Trade Representative identified Germany under Title VII of the Omnibus Trade and Competitiveness Act of 1988 for discrimination in the heavy electrical sector. USTR suspended the imposition of the sanctions available under Title VII on October 1, 1996, following a decision by the German cabinet to address U.S. concerns and reform German procurement regulations by providing for court-based review of bid challenges, in line with EU requirements. In May 1998, the German Government passed a law incorporating the new procurement regulations, which combine administrative and judicial review, into existing German competition law. The law was approved by parliament and became effective on January 1, 1999. USTR, in consultation with industry, is monitoring the implementation of the new law to determine if it truly does improve access by U.S. companies to German procurement markets.

Greece: Greek laws and regulations concerning government procurement nominally guarantee non-discriminatory treatment of foreign suppliers. Officially, Greece also adheres to EU procurement policy, and Greece is a member of WTO Government Procurement Agreement. Nevertheless, many of the following problems still exist: occasional sole-sourcing (justified as extensions of previous contracts), loosely written specifications which are subject to varying interpretations, and preferences for technologies offered by longtime, traditional suppliers. It is also a widely held belief that firms from other EU Member States have an automatic advantage over non-EU contenders in winning Greek Government tenders. It has been noted that U.S. companies submitting joint proposals with European companies are more likely to succeed in winning a contract. Greece continues to insist on offset agreements as a condition for purchase of defense items.

In December 1996, the Greek parliament passed legislation that allows public utilities in the energy, water, transport, and telecommunications sectors to sign "term agreements" with local industry for procurement. "Term Agreements" are contracts to which Greek suppliers are given significant preference in order to support the national manufacturing base. This was made possible as a result of Greece's receipt of an extension until January 1, 1998, to implement the EU Utilities Directive. Actually, before expiration of the extension, numerous term agreements worth billion of dollars were signed by Greek public utilities with Greek suppliers. Some of these term agreements are of 3-5 years duration, with an option of extending for another 3 years, thus excluding U.S. suppliers from vital sectors of government procurement for several years. The European Commission has been examining the expedited procedures by which these contracts were approved.

Italy: Italy's fragmented, often non-transparent government procurement practices still present obstacles to U.S. firms' participation in Italian Government procurement, despite some progress. Corruption, particularly at the local level, is still regarded as a problem in public procurement. Most recently, American companies have reported greater access to public and parastatal contracts. Italy has implemented EU regulations relating to procurement of goods and services and has made progress, with passage of the so-called "Merloni" legislation, towards more transparent laws and regulations for public procurement and open market competition. Italy has now completed implementation of national, EU and WTO procurement rules and regulations. Included in newly approved national legislation are provisions allowing project management services to be contracted out to private firms, in addition to project financing -- potentially opening up an entire new market in the engineering services sector with opportunities for U.S. firms.

EXPORT SUBSIDIES

Agricultural Product Export Subsidies

The EU grants export subsidies (restitutions) on a wide range of agricultural products including wheat, wheat flour, beef, dairy products, poultry, and certain fruits, as well as some manufactured products such as pasta. Payments are nominally based upon the difference between the EU price and the world price, usually calculated as the difference between the EU internal price and the lowest offered price by competing exporters. The Uruguay Round Agreement requires the EU to reduce export subsidies over six years by 21 percent in volume and 36 percent in value from a 1986-90 base period. Under the agreement, the EU is required to cut export subsidies by about $ 5-7 billion from recent levels. However, in a number of areas including beef, cheese, rice and olives, the EU appears to be rolling over unused subsidy from one year to the next. The United States is currently investigating this action as a possible violation of the WTO Agricultural Agreement.

Processed Cheese Export Subsidies

On October 1, 1997, Ambassador Barshefsky announced that USTR was invoking WTO dispute settlement procedures in the context of a Section 301 investigation to challenge practices by the EU that circumvent the EU commitments under the WTO to limit subsidized exports of processed cheese. Under its inward processing system for dairy products, the EU produces cheese for export from dairy components such as nonfat dry milk and butter. The processor receives a subsidy upon the cheese being exported, but the EU does not count these subsidies against its export subsidy ceiling on cheese. The United States contends this is a breach of the EU export subsidy commitments. Initial WTO Article XXII consultations with the EU on these practices were held in November 1997. The United States is considering next steps.

Canned Fruit

The United States and other canned fruit producing countries (Argentina, Australia, Brazil, Chile and South Africa) continue to consult with the European Commission regarding the EU internal support regime for canned fruit.

These governments believe that the operation of the EU support regime for fresh peaches and pears has allowed EU fruit processors to unfairly undercut the domestic and export prices for canned fruit for the EU trading partners.

Despite the EU claims of adherence to the letter of the 1985 U.S.-EC Canned Fruit Agreement, oversupply of the fresh fruit under the support regime may allow processors in certain Member States to ignore the minimum price requirements of the agreement. This issue has been raised in the WTO Committee on Agriculture, where eleven countries asked the chairman to convene consultations with the EU to address problems arising from the EU regime. The United States and 13 other countries, led by Chile, held a special meeting with the EU on canned fruit in June 1998 in Geneva. The EU did not respond to written questions provided prior to the meeting regarding the operation of its support regime for canned fruit.

Government Support for Airbus

Since the inception of the European Airbus consortium in 1967, its partner governments (France, Germany, Spain and the United Kingdom) have provided massive support to their national company partners in the consortium to aid the development, production and marketing of large civil aircraft. Since that date, the Airbus partner governments either have committed, or are in an advanced stage of consideration of providing, additional funds for derivative models of current Airbus aircraft. On February 2, 1998, the Government of the United Kingdom announced that it has agreed to a long-term loan of up to 123 million pounds (212 million dollars) toward the design and development of the new wing for the Airbus A340-500/600 aircraft. For 1999, the French parliament budgeted 644 million francs ($115 million) in reimbursable advances for this same aircraft program.

Government support for Airbus has facilitated its growth and the introduction of a range of large transport aircraft by allowing its national partner companies to avoid bearing the normal commercial risks that U.S. manufacturers face when investing in new civilian aircraft programs. Prior to the recent round of new development support, the Airbus partner governments bore 75 to 100 percent of the development costs for all major lines of Airbus aircraft and also provided other forms of support including equity infusions, debt forgiveness, debt rollovers and marketing assistance.

The individual Airbus partner companies are leading aerospace manufacturers in their home markets and, in some cases, have substantial government participation in ownership. However, last July the French Government announced a plan for the privatization of Aerospatiale. Under the plan finalized in December 1998, the Government of France transferred its minority stake in Dassault (45.76%) to Aerospatiale which was then merged with rival Aerospace company Matra Hautes Technologies, an offshoot of the Lagardère group. Matra will take a 30% to 33% stake in the new group, while another 20% will be floated on the stock market some time in April 1999. The French Government will then own less than 50% of the new Aerospace group.

The United States is concerned that the launch of new Airbus programs and the restructuring of the Airbus consortium may be used to justify additional government subsidies. The fact that Airbus captured nearly 50 percent of large civil aircraft orders in 1998 and its outstanding orders are over $90 billion clearly demonstrate that the Airbus consortium can no longer be considered an "infant industry" requiring government support. The United States also continues to be concerned that the European Commission and its Member States may attempt to influence commercial aircraft competitions in favor of Airbus aircraft in a manner inconsistent with its obligations. The 1996 National Trade Estimate Report provided examples of such attempts. The United States will continue to monitor EU involvement in future competitions and its compliance with aircraft trade agreements**.**

To address U.S. concerns about the impact of European government support for its civil aircraft manufacturers, the United States negotiated a bilateral large aircraft agreement with the EU in 1992. This agreement expanded on the principles contained in the 1979 GATT Agreement on Trade in Civil Aircraft and contains specific disciplines on the provision of future European government support for aircraft development by Airbus and the repayment of past support. In addition, it includes a prohibition on government support for the manufacturing, marketing and sale of aircraft and a clarification of disciplines on government intervention in aircraft marketing or procurement decisions.

The United States held formal consultations with the European Commission in January and July 1998 under the terms of the 1992 bilateral agreement. At those meetings, the U.S. Government and the European Commission exchanged information under the Agreement's transparency provisions on direct and indirect government support and discussed government involvement in large civil aircraft manufacture and marketing. Ideas for improving the operation of the agreement were also examined.

Of particular concern are plans announced by European governments to provide financial support to develop new Airbus aircraft, including the A340-500/600. (In the past, some loans for Airbus programs, repayable from royalties on aircraft sold, have been effectively forgiven because projected sales did not materialize.) The U.S.-EU aircraft agreement requires that the European Union provide information to the United States on a "critical project appraisal" demonstrating the commercial viability of new aircraft programs at the time governments commit financial support to them. The EU has not yet provided the requested information.

Government Support For Airbus Suppliers

Belgium: The Government of Belgium and Belgian regional authorities are reported to subsidize Belgian aircraft component manufacturers which supply parts to Airbus Industrie. According to available information, the subsidy is provided in a foreign exchange rate guarantee program under which payments are made to a consortium of Belgian companies, Belairbus, which is an "associate member" of Airbus. The Government of Belgium and Belgian regional governments provide payments to the Belairbus companies to cover the difference between actual (i.e., marketplace) foreign exchange rates and a guaranteed rate. The specific level at which the guaranteed exchange rate was established has varied by Airbus aircraft programs as well as by the number of aircraft in each program. The United States has also posed questions to the EU under provisions of the WTO Agreement on Trade in Civil Aircraft and the Agreement on Subsidies and Countervailing Measures, the latter permits member countries to seek and obtain information on the nature of a practice maintained by another member and to clarify why it may not have been notified to the WTO as a subsidy. The EU reply failed to supply substantive answers U.S. questions but indicated that the Belgium program was being terminated.

France: In December 1997, the European Commission announced its approval of a French Government "reimbursable advance" to fund the development by European avionics companies of a new flight management system (FMS) for Airbus aircraft, the development of which by these companies the Commission said "would not be possible without aid". The Commission justified this subsidy on its estimation that a specific U.S. company had a "quasi-monopoly" on sales of FMS for Airbus aircraft and that the French Government funding would help reduce Airbus's dependence on the U.S. supplier. In fact, the overwhelming proportion of Airbus avionics is already European sourced, and the FMS in question is installed in avionics equipment produced by one of the European companies designated to receive the subsidy. It thus appears that the intended effect of this subsidy is to entirely displace the U.S. company as a supplier of FMS for Airbus aircraft.

Government Shipbuilding Industry Support

Member States of the EU provide subsidies and other forms of aid to their shipbuilding and ship repair industries. Forms of aid have included subsidized restructuring of domestic shipbuilding industries, direct subsidies for operations and investment, indirect subsidies, home credit schemes, subsidized export credits and practices associated with public ownership of yards.

In June 1989, the Shipbuilders Council of America (SCA) filed a Section 301 petition, seeking elimination of subsidies and trade distorting measures for the commercial shipbuilding and ship repair industry. In response, USTR undertook to negotiate a multilateral agreement in the OECD to eliminate all subsidies for shipbuilding by OECD member countries. An agreement was signed in 1994 by South Korea, Japan, Norway, the United States and the EU and could enter into force only after ratification by all signatories. The initially-scheduled ratification deadline of January 1, 1996 was later extended to June 15, 1996 in order to accommodate the ratification procedures and time lines for certain signatories. The EU ratified the agreement and adopted implementing legislation in December 1995. All other signatories, except the United States, were able to ratify the agreement by the extended deadline. Although the United States has not yet ratified the agreement, the Administration supports ratification and plans to continue to push for ratification.

Until June 1998, EU aid to shipbuilding was governed by the Seventh Council Directive, which was adopted in 1990. Under the Seventh Directive, the Commission set annual ceilings for subsidies for shipbuilding and ship conversions (but not ship repair). Although the EU would have liked to see the OECD agreement implemented, on June 29, 1998, it adopted a Council Regulation establishing new rules on aid to shipbuilding because the Seventh Directive was due to expire at the end of 1998. According to the Regulation, operating aid, whose ceiling is dictated by the Seventh Directive (nine percent for shipbuilding contracts with a contract value before aid of more than ECU 10 million and 4.5 percent in all other cases), will be phased out by December 31, 2000. The shift away from operating aid to other forms of support (such as aid for restructuring, research and development and environmental protection, types of aid already covered by existing Community guidelines), is an attempt by the Commission to subject shipbuilding to the same state aid rules faced by other sectors. The Regulation aims to uphold the integrity of the common market by establishing a level shipbuilding playing field within the EU. However, the new EU regime on shipbuilding is more lenient than the OECD agreement.

LACK OF INTELLECTUAL PROPERTY PROTECTION

The EU and its Member States support strong protection for intellectual property rights. The Member States are members of all the relevant WIPO conventions, and they and the EU regularly join with the United States in encouraging other countries, primarily developing ones, to sign up to and fully enforce high IPR standards, including those in the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs). However, there are a few Member States with whom the United States has raised concerns either through Special 301 or WTO Dispute Settlement, about failure to fully implement the TRIPs Agreement.

The U.S.-EU Transatlantic Economic Partnership (TEP) initiative, initiated at the May 1998 U.S./EU Summit, identifies intellectual property as an area where multilateral and bilateral cooperation can be intensified and extended. The TEP action plan for multilateral cooperation addresses cooperation on TRIPs implementation and WIPO treaty ratification, access to the Trademark Law Treaty, resolution of domain name trademark conflicts and pursuing measures to fight optical media piracy. On the bilateral side, a number of issues of interest to both the U.S. and the EU, including patent and design protection, will be addressed in the short- and long-term.

Industrial Designs

The European Commission proposed a directive on the Legal Protection of Industrial Designs in 1993 to provide for Community-wide registration of industrial designs, and up to a maximum of 25 years of protection against unauthorized reproduction of industrial designs. The legislation provides protection similar to a trademark with the criteria that the design must be novel and have a high degree of individual character.

A provision in the directive known as the “repair clause” has been hotly debated since the directive’s appearance due to diverging Member State and industry views over design protection of spare auto parts. U.S. firms also have expressed different opinions on the issue, with U.S. auto manufacturers favoring strong protection for spare car body parts, and insurance companies and spare parts manufacturers preferring more flexibility in the directive. At a June 1998 Conciliation Committee, the Council and the European Parliament agreed to remove protection for spare parts from the proposed legislation pending further study, but to leave open the possibility of replacing it in a future amendment.

The Commission expects to finish a revision incorporating the Conciliation Committee results in early 1999, after which the legislation will return to the European Parliament under a simple consultation procedure. Whether the Council will adopt a final directive in the first half of 1999 depends on the speed with which the European Parliament issues its opinion on the compromise version. Although the parliamentary report should be pro forma, the European Parliament's 1999 session will be cut short by elections in June, leaving it little time to issue opinions. Once the directive takes effect, OHIM (the Office for Harmonization in the Internal Market – also known as the Community Trademark Office) will be the registrar for industrial designs.

Trademarks

Registration of trademarks with the European Community trademark office (official name: Office for Harmonization in the Internal Market – OHIM) began in 1996. OHIM, located in Alicante, Spain issues a single Community trademark which is valid in all 15 EU member states.

Trademark Exhaustion: The Trademark exhaustion principle limits a trademark owner’s ability to resort to remedies against importers/distributors of trademarked goods outside channels authorized by the trademark owner. The current EU regime supports the principle of ‘community exhaustion,’ which allows resale of trademarked goods within the fifteen member states once the trademark owner licenses their sale in any EU country.

European Union

In 1998 a European Court of Justice ruling (in *Silhouette v. Hartlauer*) upheld the legality of community trademark exhaustion within the EU. The European Commission has defended the principle by maintaining that community exhaustion heightens competition within the internal market. However, member state opinion remains divided and at the insistence of the U.K. and Sweden, the Commission began a study into the economic impact of community exhaustion in the member states. European discount chains prefer, and have actively lobbied for, a system of 'international exhaustion,' which limits the trademark owner's right to control distribution of goods once he/she licenses them for sale anywhere in the world.

Madrid Protocol: The World Intellectual Property Organization's (WIPO) Madrid Protocol, negotiated in 1989, provides for an international trademark registration system permitting trademark owners to register in member countries by filing a standardized application. The European Community has not joined the Madrid Protocol although member states have. The U.S. has not acceded because it objects to voting provisions in the protocol that would allow the EC a vote upon accession in addition to the votes of its member states. Given the use of consensus decision-making procedures in WIPO and in the precursor Madrid Agreement, the U.S. has proposed an informal "gentlemen's agreement" that would establish voting procedures to address U.S. concerns about the EU vote in the Madrid Protocol. The EU has not yet responded to the U.S. proposal.

Utility Models: In 1997 the European Commission proposed a directive on utility models to harmonize a level of protection in the member states for industrial applications lower than that granted for patents. Under the directive, protection would apply to "any inventions susceptible to industrial application, which are new and involve an inventive step" for a maximum of ten years. Utility model protection may also provide temporary protection pending granting of a patent. Business groups have criticized the directive as being unclear and ambiguous, noting that implementation may do more harm than good by introducing additional business costs. It is unlikely the directive will reach adoption in the near term. However, both European and U.S. industry are united in disagreeing with the Commission that harmonization of this type is needed in Europe.

Geographical Indications: U.S. industry has expressed concern about the 1992 EU Regulation on "Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs" as amended by a 1997 regulation. Some believe it does not achieve a balance between protection for legitimate trademarks and legitimate geographical indicators. In practice, the regulation could bring registered trademarks in conflict with registered geographical indicators.

Patents

Patent filing and maintenance fees in the EU and its member states are extraordinarily expensive relative to other countries. Fees associated with the filing, issuance and maintenance of a patent over its life far exceed those in the United States. In an effort to introduce more reasonable costs, the European Patent Office (EPO) reduced fees for filing by 20 percent in 1997.

European Community Patent: The European Commission consultation process on a European Community Patent (one that would harmonize patent issuance in EU member states) has yielded a number of conclusions in the Commission's Green Paper. The paper acknowledges a consensus on the need for a harmonized patent system among EU member states, and proposes that such a system supplement -- not replace -- patents issued by the European Patent Office (EPO) in Munich (with a wider membership than the fifteen member states) and national patent offices. In addition, the Commission believes the cost of an EC patent shouldn't be more than a U.S. or Japanese patent and that EU law on patentability of computer programs and software related inventions must be brought into line with the United States and Japan. The Commission will advance legislation for a European Community patent in late 1999. However, a stumbling block to this effort is disagreement among member states on which official EU languages will be used in patent applications.

Ireland: As part of the promised comprehensive copyright legislation, the Irish Government is also committed to addressing non-TRIPS conforming provisions of Irish patent law. Ireland's patent law, as it currently stands, fails to meet TRIPs obligations in at least two respects: (1) the compulsory licensing provisions of the 1992 patent law are inconsistent with the "working" requirement prohibition of TRIPs articles 27.1 and the general compulsory licensing provisions of article 31; and (2) compulsory licensing conditions provided for in the 1964 patent law, which continues to apply in some applications processed after December 20, 1991, do not conform to the non-discrimination requirement of TRIPs article 27.1.

Biotechnological Patenting

On June 16, 1998, after years of debate, the European Council adopted a directive on legal protection of biotechnological inventions. The directive harmonizes EU member state rules on patent protection for biotechnological inventions. Member states must bring their national laws into compliance with the directive by July 30, 2000. The directive excludes plant and animal varieties from patentability and, although a positive development for U.S. firms, will not provide the same level of patent protection that is provided in the United States to biotechnological inventions. In addition, the directive is not binding on the European Patent Office.

Copyrights

In April 1998, the European Commission proposed a directive on the "Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society". The directive would require member states to implement harmonized regulations on the protection of copyrights and is seen as a first step in granting copyright protection for works in digital form. Although the directive was proposed following a lengthy consultation process, its provisions are controversial, especially a mandatory exception for private copying and for temporary reproductions that are "integral" to a technological process and have no separate economic significance. The European Parliament is expected to propose extensive amendments to the legislation in a 'first-reading' in February 1999. However, it is unlikely that the Council will adopt a final version in the first half of 1999.

Copyright Protection for Databases: By January 1, 1998, member states were required to transpose into national law the 1996 EU directive on the legal protection of databases. A new 'sui generis' right extends copyright protection for fifteen years to the contents of a database, whether or not the material is otherwise eligible for copyright protection. However, this right is available to non-EU creators of databases only on the basis of reciprocity. The U.S. business community, while supportive of protection for databases as essential to a sound legal framework for Europe's information society, remains concerned about the impact the reciprocity provisions of the directive will have on U.S. publishers of databases. Scientists worry that the directive will make access to databases prohibitively expensive although the directive permits member states to allow exemptions for groups accessing data for research or education.

Member State Practices

Some EU Member States have their own special practices regarding intellectual property protection and enforcement that do not necessarily comply with international obligations. A brief discussion of those which are of concern to the United States follows:

Austrian copyright law also requires that a license fee be paid on imports of home video cassettes and cable transmission. Of these fees, 51 percent are paid into a fund dedicated to social and cultural projects. In the United States' view, the copyright owners should receive the revenues generated from these fees and any deductions for cultural purposes should be held to a minimum.

Belgium, France: Belgium and France collect levies on blank tapes and recording equipment to compensate right holders for the private, home copying of their works and to provide a source of funding for local productions. These levies are distributed by national collecting societies to the various categories of right holders according to statutory provisions. National treatment is denied to some U.S. right holders, however, and the United States motion picture and recording industries have not been able to collect their rightful share of these proceeds.

Denmark: Denmark's intellectual property laws are generally adequate. However, certain problems exist. Denmark was named on the 1998 Special 301 Watch List because enforcement is made difficult by the fact that the Danish Government does not make available provisional relief on an *ex parte* basis to prevent ongoing infringement or preserve evidence in the context of civil litigation. Article 50.1 of the TRIPs Agreement requires that such provisional relief be made available in civil or criminal litigation. The availability of such relief is particularly important to the United States software industry because of the ease with which the evidence of infringing use can be eliminated if the infringers are forewarned of the right holder's interest. In response, the Danish Government has set up a committee to find out which legislative changes are needed in Danish copyright laws and other related legislation to meet its TRIPs requirements.

Furthermore, Denmark's equivalent of the Environmental Protection Agency is at present compelled by a Supreme Court ruling to permit competitors to rely upon extremely valuable test data for certain chemical products that a U.S. firm has submitted in order to receive approval to market its products in Denmark. This contravenes the objective of the TRIPs Agreement and perhaps TRIPs Article 39.3.

U.S. authors do not receive royalties from Denmark for photocopying of their works used in Danish schools and universities, because the Danish collecting agency Copydan will not accept the validity of “en bloc” powers of attorney issued by U.S. publisher and author organizations. Copydan maintains that it will pay only to a U.S. collecting agency built on a model similar to its own. This issue is being pursued at present on an informal basis with the Danish Government.

Finland: Finland is working to achieve compliance with its obligations under the TRIPs Agreement in regard to *ex parte* searches. There is a support for a legislative fix for the matter and simple provisional changes to the law are already in the drafting stage.

Greece: Greece has been on the Special 301 Priority Watch List since 1994. Just prior to an out-of-cycle review in December 1996, the Greek Government submitted an "action plan" laying out the steps it would take by April 1997 to reduce audio-visual piracy. While some of these steps were taken, the Greek Government has lagged behind severely in licensing television stations in accordance with the provisions of the 1995 media law. The process, while finally underway after extremely long delays, was less than completed by December 1998. The U.S. Government launched a WTO TRIPs non-enforcement challenge and consultations under WTO auspices were started in June 1998. Consultations continue. Two other significant IPR problems are lack of effective protection of copyrighted software and of trademarked products in the apparel sector.

Ireland: Ireland is a member of the World Intellectual Property Organization and a party to TRIPs. Following intensive negotiations with the U.S. Government in 1997, the Irish Government committed to introducing into the parliament new copyright legislation by December 31, 1998, to bring Ireland's laws into line with its obligations under the TRIPs agreement. Dublin also agreed to enact a new smaller "break-out" copyright bill in advance of comprehensive legislation, which would address the Government's most pressing concerns with regard to Irish copyright protection.

This breakout bill was enacted in June 1998, and among other provisions, strengthened the presumption of copyright ownership and increased penalties for copyright violation. In mid-December 1998, the Irish Government informed USTR that because of delay in drafting the comprehensive legislation, the Irish Government would not be able to introduce the legislation in the Irish parliament by the December 1998 target. The Irish Government informed USTR that it now intends to introduce the new legislation no later than March 1999 and to make every effort to have it enacted by July 1999.

Examples of TRIPs inconsistencies in current Irish law which the government is committed to addressing in comprehensive reform legislation by the 1999 deadline include absence of a rental right for sound recordings, and no "anti-bootlegging" provision. An Irish failure to enact the legislation in accordance with its commitments may affect the 1999 section 301 review.

Italy: In 1998, the U.S. Trade Representative placed Italy on the “Priority Watch List” under the Special 301 provision of the United States Omnibus Trade and Competitiveness Act of 1988, due to national TV broadcast quotas in excess of the EU norm (see Services Barriers), and to a lengthy delay in passage of national legislation to address ongoing serious deficiencies in protection of copyright for sound recording, computer software and film videos. In October 1996, the Italian Government introduced anti-piracy legislation in Parliament that would impose administrative penalties and increase criminal sanctions. The bill is still awaiting final Parliamentary approval. The United States will continue to monitor developments in this area closely.

Portugal: Portugal's laws on the protection of intellectual property do not provide adequate protection for test data submitted to regulatory authorities for marketing approval of certain products (including pharmaceuticals) as required by the WTO TRIPs Agreement. Portugal is currently in the process of updating several articles of its existing legislation, including the section which covers the protection of test data. The United States has informed Portugal of its concerns in this regard and will monitor the development and implementation of changes to the legislation.

Spain: Business statistics indicate that software piracy declined in Spain from 74 percent in 1995 to 59 percent in 1997, but still remains at a high level. U.S. companies hope that the judiciary will provide support for this problem by processing piracy cases expeditiously and by imposing adequate penalties on offenders. In recent years, the Spanish Government has increased its efforts to educate both the police and the judiciary as to the economic significance of this problem.

Sweden: While Swedish intellectual property laws are satisfactory, their enforcement has been problematic. The Swedish Government has not provided sufficient financial or personnel resources or training to the police and prosecutor's office, nor has it made IPR enforcement a top priority. During the past year, however, the Government has amended its law to allow for provisional relief in the context of civil searches in copyright enforcement cases, an action that has improved the software industry's greatest copyright enforcement problem. Another problem area, in which a conflict exists between the Swedish constitution's guarantee of freedom of information and the rights of copyright holders of unpublished works remains unsolved, although the Government has begun the process of changing its law to protect unpublished works.

SERVICES BARRIERS

Broadcast Directive and Motion Picture Quotas

In 1989, the EU issued the Broadcast Directive which included a provision requiring that a majority of entertainment broadcast transmission time be reserved for European origin programs "where practicable" and "by appropriate means." By the end of 1993, all EU Member States had enacted legislation implementing the Broadcast Directive.

The process begun by the Commission in 1993 to revise the Broadcast Directive in an effort to strengthen quotas was concluded in April 1997 through a conciliation committee that resolved differences between the European Parliament and the Council. By the time an agreement was reached on a revised directive, the divisive issue of strengthening European content quotas and expansion of the directive's scope to new services had fallen by the wayside despite the Parliament's protectionist line. The United States continues to monitor developments with respect to the Broadcast Directive.

Several countries have specific legislation that hinders the free flow of some programming. A summary of some of the more salient restrictive national practices follows:

France: The language of the EU Broadcast Directive was introduced into French legislation in 1992. France, however, chose to specify a percentage of European programming (60 percent) and French programming (40 percent) which exceeded the requirements of the Broadcast Directive. Moreover, the 60 percent European/40 percent French quotas apply to both the 24-hour day and to prime time slots. (The definition of prime time differs from network to network according to a yearly assessment by France's broadcasting authority, the "Conseil Supérieur de l'Audiovisuel," or CSA.) The prime time rules in particular limit the access of U.S. programs to the lucrative French prime time market. France's broadcasting quotas were approved by the European Commission and became effective in July 1992.

In addition, the United States continues to be concerned about the French radio broadcast quota (40 percent of songs on almost all French private and public radio stations must be Francophone) which entered into force on January 1, 1996. The measure has the effect of limiting the broadcast share of American music.

Italy: In 1998, the Italian Parliament passed Italian Government-sponsored legislation including a provision which makes Italy's national TV broadcast quota stricter than the EU 1989 Broadcast Directive. The Italian law exceeds the EU Directive by making 51 percent European content mandatory during prime time, and by excluding talk shows from the programming that may be counted towards fulfilling the quota. Also in 1998, the Italian Government issued a regulation requiring all multiplex movie theaters of more than 1300 seats to reserve 15-20 percent of their seats, distributed over no fewer than three screens, to showing EU-origin films on a "stable" basis. Cinema owners argue that "stable" needs to be interpreted flexibly (i.e., the quotas applied on a yearly rather than daily basis) in order to ensure continued profitability. Indications are that the government intends to apply the quota on a daily basis.

Portugal : In July, 1998, Portugal passed new television legislation containing language from the EU broadcast directive. The new legislation modifies and strengthens the existing quotas for Portuguese language, European, and independent productions. The new law, however, also includes provisions for flexible application of these quotas. In practice, available Portuguese and European programming is insufficient for broadcasting needs and, consequently, the quotas have not been strictly enforced. Portugal is also considering new draft cinema legislation, which may allow the imposition of distribution and screen quotas. The United States will closely monitor the implementation of this restrictive legislation.

Spain: Draft legislation implementing the revised EU Broadcast Directive awaits final parliamentary action, which is expected in 1999. The proposed new law maintains the same restrictions on non-EU programming as in the earlier law; i.e. it reserves a majority of broadcast time for European content programming. Both government-owned and private television networks readily meet the EU content requirements and according to government officials, no operator has had to alter its programming to comply with the directive since the viewing public has a preference for content that is culturally and linguistically Spanish. Although U.S. programs might have increased sales without the quota provisions of the directive, in fact American films and popular TV serials form a sizeable portion of prime time viewing.

In January 1997, Spain issued regulations implementing the 1994 cinema law that obliged distributors to earn dubbing licenses for non-EU produced films by distributing EU-produced films. The law stipulates that the first license is earned when box office receipts exceed 10 million pesetas ($70,500); a second when they exceed 20 million ($141,000); and a third when they exceed 30 million ($211,500). However, the regulations also included a provision that the dubbing license requirement would be phased out at the end of five years, i.e. by the end of 1999. Nevertheless, the screen quota provision, which requires motion picture exhibitors in the course of each year to show one day of EU-produced films every three days of non-EU produced films, remains in effect.

In January 1998, the regional government of Catalunya adopted a Law on Linguistic Policy. One of the implementing decrees, scheduled to go into effect in March 1999, imposes film dubbing and screen quotas, which could have a negative economic impact on distributors and exhibitors alike. The decree stipulates that if a film opens with sixteen or more copies being shown at once, 50 percent of the copies would have to be dubbed into Catalan.

The decree also obliges exhibitors and reserve a minimum of 25 percent of their showings of sound films dubbed or subtitles in Catalan, a percentage that would be calculated on the basis of one year's programming. U.S. film companies active in the Spanish market welcome the end of the national dubbing license requirement by the end of 1999, but are concerned about the precedent that would be set for linguistic minorities in other regions of Spain if the Catalan law imposing dubbing and screen quotas goes into effect.

Computer Reservation Services

U.S. computer reservation systems (CRS) companies continue to face problems in the EU market, since several Member State markets are dominated by a CRS owned by that State's flag air carrier. Past cases have eventually been resolved after U.S. Government intervention or recourse to national administrative and court systems.

Acting on a complaint filed in 1996, the U.S. Department of Justice asked the EU competition authority to investigate a range of anti-competitive practices by a European firm. This was the first case under the positive comity provision of the 1991 U.S.-EU Antitrust Cooperation Agreement. The EU investigation is still underway as of February 1999; while the Commission cannot say when it will be completed, the final ruling may address some of the above concerns. The U.S. firm has also filed a complaint with the EU transportation authority against the European firm for violation of the EU CRS Code of Conduct.

There is also concern about how Swedish data protection regulations apply to American CRS operations in that country. One U.S-owned CRS firm complains that Sweden is the only EU member state in which it has not either already received or will soon receive data protection-related permits for its operations. The Swedish argument is based on the concern about levels of data privacy protection in the United States and on passenger notification issues. Resolution of the matter is being sought in the Swedish court system and under the U.S. –Swedish bilateral aviation agreement, and a decision is expected by mid-1999.

Airport Ground Handling

In October 1996, the EU issued a directive to liberalize the market to provide ground-handling services at EU airports above a certain size by January 1, 1998. While generally welcoming this move, U.S. airline companies and ground-handling service providers remain concerned that airports can apply for exemptions to continue to have a monopoly service provider through January 1, 2002, and can also limit the number of firms which can provide certain services on the airport tarmac (ramp, fuel, baggage and mail/freight handling) either for themselves or for other carriers. To some extent, these potential barriers are offset by more liberal provisions in the bilateral air services agreements which the United States concluded with eight

EU Member States (Austria, Germany, Belgium, the Netherlands, Luxembourg, Denmark, Sweden and Finland).

Germany: In January 1998, Commission competition authorities - acting on a complaint by several EU airlines – ruled that Frankfurt Airport Terminal Two and the western portion of Terminal One would have to permit airlines to handle baggage for their clients (self-handling) and by January 1, 1999 would have to authorize a third independent baggage handling service provider. Frankfurt had requested a derogation from the directive until January 1, 2001. This was the first decision under the 1996 directive.

Ireland: Airlines serving Ireland may provide their own ground handling services, but are prohibited from providing similar services to other airlines. The bilateral U.S.-Ireland aviation agreement places some restrictions on aviation services between the United States and Ireland. Under the agreement, for every north Atlantic flight to or from Dublin airport, a corresponding flight or stop must be made at Shannon airport on Ireland's west coast, making service to Ireland unprofitable for some U.S. airlines. U.S. carriers have told embassy that the "Shannon requirement" affects the profitability of their operations in Ireland, but has not stopped U.S. carriers from introducing new service between Ireland and the United States to start in 1999.

Postal Services

U.S. express package services remain concerned that the prevalence of postal monopolies in many EU countries restricts their market access and subjects them to unequal competitive conditions. Proposals to liberalize many postal services have made little headway in the face of entrenched Member State opposition, and the European parliament still expects a proposal from the Commission on the liberalization of postal services and a study on its impact on trade and markets. In the meantime, a U.S. firm has filed a complaint with the EU antitrust authority against the German Post for predatory pricing, abuse of dominant position, state aid and unfair cross-subsidization of services. The case, pending since 1994, has made little progress to date, apparently due to reluctance by the EU authority to act decisively against the German Government. The U.S. firm is concerned that the German Post is using subsidies to finance acquisitions and investments to strengthen even further its market position vis-a-vis private sector express delivery services. The company fears that further delay by the EU in ruling on the case will only exacerbate the unfair competitive situation.

Exemptions from Most-Favored-Nation Treatment

In January 1995, the EU notified the WTO of its intent to present a new draft General Agreement on Trade in Services (GATS) schedule of commitments, with accompanying list of MFN exemptions, to reflect the enlargement of the EU to include Austria, Finland, and Sweden. Two years later, in January 1997, the EU presented the draft document, which was discussed for the first time at a meeting of the WTO working party examining the consistency of the enlarged EU with Article V of the GATS (Article V is the services counterpart to GATT Article XXIV). At that meeting, the United States and other countries raised legal concerns that the draft expands to the three new Member States a number of MFN exemptions contained in the already existing EU-12 GATS MFN exemption list, thereby creating new opportunities for the three new Member States to discriminate against service providers of non-EU countries. The United States will seek to ensure that EU enlargement in the services area is consistent with the EU's WTO obligations.

Auditing Services

Greece: The transition period for de-monopolization of the Greek audit industry officially ended on July 1, 1997. Numerous attempts to reserve a portion of the market for the former state audit monopoly during the transition period (1994-97) were blocked by the European Commission and peer review in the OECD. In November 1997, the government issued a presidential decree which effectively undermines the competitiveness of the multinational auditing firms. The decree established minimum fees for audits, and restrictions on utilization of different types of personnel in audits. It also prohibited audit firms from doing multiple tasks for a client, thus raising the cost of audit work. The government has defended these regulations as necessary to ensure quality and objectivity of audits. In practical effect, the decree constitutes a step back from deregulation of the industry.

Shipping Restrictions

Spain: In 1992, the EU established a calendar for liberalizing cabotage restrictions, but only to vessels registered in a member country. The 1992 agreement among the EU member countries on a common cabotage regime is to be implemented during a transition period from 1993 to 2004. While cabotage within peninsular Spain has been liberalized, the EU has allowed Spain to restrict merchant navigation to and within the Balearic Islands, the Canary Islands and CEUTA and Melilla to Spanish flag merchant vessels until January 1, 1999. The Spanish Government has begun to liberalize merchant navigation for these routes, most recently holding a bid for a six-year contract for routes with inadequate service levels. However, state-owned company Transmediterranea was the only bidder for these routes.

Telecommunications Market Access

U.S. telecommunications equipment industry access to EU Member States varies widely from relatively open to nearly closed. As described in the section on government procurement, most EU Member States discriminate against non-EU bids in the telecommunications sector. Increasing privatization of the telecommunications sector in Europe may in the long-run make procurement less of an issue, but access may still be impeded through standards and standard-setting procedures, testing, certification and interconnection policies.

In the area of standards, the United States has raised concerns about the EU approach to standards for third generation wireless systems currently referred to as "3-G". In December 1998, the EU Council and Parliament approved a decision on the coordinated introduction of a third generation mobile and wireless communications system called UMTS (Universal Mobile Telecommunications Systems). The decision calls for the establishment of a harmonized system for the granting of operating licenses by January 2000 and a common technology standard approved by the European Telecommunications Standards Institute (ETSI). The decision sets January 1, 2002 as the deadline for launching UMTS. The United States has expressed concern that this action, as well as moves by some Member States to grant licenses and reserve frequencies for UMTS, promotes a particular European-developed standard to the exclusion of other standards, bypassing industry-led efforts within the ITU (International Telecommunications Union) to achieve a global consensus.

Under the WTO Agreement on Basic Telecommunications Services, eleven Member States made commitments to provide market access and national treatment for voice telephony services as of February

5, 1998, the date the agreement entered into force. Four Member States had later phase-in dates: Spain (December 1, 1998), Ireland and Portugal (January 1, 2000) and Greece (January 1, 2003). Three Member States maintain foreign investment restrictions: France limits investment in France Telecom; Italy limits foreign investment in STET; and Spain limits foreign investment by government-owned operators. The European Communities and its Member States also adopted the pro-competitive regulatory commitments set forth in the Reference Paper associated with the WTO Agreement. All EU Member States have now formally ratified the Agreement.

The European Commission has been monitoring and reporting regularly on the implementation of telecom liberalization within the EU. The fourth report was released in December 1998. The report concluded that the bulk of the measures in the telecommunications package had been transposed into national legislation by the Member States, although some gaps remained. As of October 1998, the Commission was pursuing 84 infringement proceedings against Member States with respect to the regulatory package.

The Commission reported that telecommunications regulatory authorities had been established in all Member States, but expressed concern about the operation of some of these bodies. In several Member States, regulatory functions are allocated both to the Ministry responsible for telecommunications and to a separate administrative body. In a few cases (The Netherlands, Austria), the Commission observed a lack of clarity in the division of powers. In some member states (Belgium, Finland, Luxembourg, Ireland, France) it was noted that regulatory decisions could be influenced by State ownership considerations. Concerns were also noted about inadequate staffing by the regulators (Belgium, Greece, Italy, Luxembourg) or the seconding of staffing from telecom operators or government Ministries to the regulator (Greece, Portugal, Ireland).

The Commission report cited concerns with respect to licensing conditions (Belgium, Spain, France, Italy), lack of transparency in licensing (Ireland), the level of license fees (Germany, France; Luxembourg and Italy for mobile), time limits for the issuance of licenses (Belgium, Greece, France, Italy, Luxembourg), and cumbersome licensing procedures (Austria, Belgium, Italy, Spain). There are limitations on the numbers of licenses issued in Greece and Belgium has so far granted only provisional licenses.

In the area of interconnection, new entrants have complained that negotiations have been excessively lengthy in a number of Member States (Belgium, Germany, France, Austria), or have been refused or deferred because the incumbent has first required the other party to obtain a licenses (Italy, Luxembourg) or because of other issues (Denmark, Sweden). Substantial interconnection disputes have been reported in Denmark, Germany, Austria, Sweden, the United Kingdom and Greece. Only in France and the United Kingdom do interconnection charges fully meet the “best practice” targets set by the Commission. Charges in other Member States are higher for one or more types of services.

France requires new entrants to contribute to a fund to finance the cost of universal service. Italy has created a funding mechanism which will be applied in 1999 based on operators’ results for 1998. The report notes that the methodology for calculating charges is a matter of concern for both countries.

The Commission report observes that in some Member States the present tariff structure of voice telephony provided by the incumbent operator appears to be artificial and that end-user tariffs do not follow principles of cost orientation. Some Member States do not have an appropriate cost accounting system for public telecom networks/services (Greece, Ireland, Portugal, Spain). In others, telecom operators with significant market power do not have such a system in place (Belgium, Luxembourg) or the system lacks sufficient transparency to ensure the absence of cross-subsidization (Austria, France, Germany, Italy, Sweden).

Germany: Beginning in December 1998, Deutsche Telekom (DT) sought to revoke existing interconnection agreements and to impose additional charges, based on technical claims which DT has not yet substantiated. In response, the regulator so far has announced only that it will investigate complaints regarding DT's approach on an ex post facto basis. As a result new entrants, many of who have already faced delays of up to a year in interconnection negotiations with DT, confront worsened business conditions. DT's latest proposal appears unilaterally to impose non-justified technical requirements and unrelated charges on interconnection that are not based on costs. If so, it would create serious concern as to whether Germany is adhering to its WTO commitment that interconnection be provided in a timely fashion, on terms, conditions and cost-oriented rates that are transparent and reasonable.

Italy: In recent years, the Italian Government has undertaken a liberalization of the telecom sector, including privatization of the former parastatal monopoly Telecom Italia (formerly STET); creation of an independent communications authority; and allowing both fixed-line and mobile competitors to challenge the former monopoly. Following the EU January 1, 1998 deadline for full liberalization of its telecom sector, Italy issued more than a dozen fixed-line licenses in 1998, including to new entrants with U.S. participation. The government plans to issue a fourth mobile license in the first half of 1999. Concerns remain regarding interconnection fees and conditions; frequency allocation for mobile carriers; regulatory due process, transparency and even-handedness. But the Italian market is much more open to services exports in this sector than it was even one year ago, at the time of the previous report.

Belgium: Belgium amended its Telecommunications Act to provide the domestic legal basis to implement its obligations under the WTO Telecommunications Agreement on December 18, 1997. Key implementing regulations yet to be issued include those to formally establish a body to resolve interconnection tariff disputes and to govern to the utilization of telecommunications infrastructure. Industry sources note that the system lacks transparency, as the complete body of relevant legislation and implementing regulations is not easily available. The Belgian regulator, the Belgian Institute for Postal Services and Telecommunications (BIPT), is supervised by the Minister of Telecommunications, who is also responsible for the Belgian government's 51 percent shareholding in Belgacom, the former monopoly telecommunications supplier. While BIPT has won praise for its early efforts to introduce competition in a newly liberalized market, industry observers agree that increased independence and resources for BIPT would strengthen its ability to provide pro-competitive regulation. Interconnection rates in Belgium remain above the European average. Telecommunication operators and service providers in Belgium criticized Belgacom's 1999 reference interconnection offer, an average reduction of 15 percent, as unacceptably high and unlikely to ensure growth and competition.

Legal Services

Austria: To provide legal advice on foreign and international law, the establishment of a commercial presence is required as well as joining the Austrian Provincial Bar Association. Only an Austrian national can join the bar association.

Belgium: In order to be licensed to practice Belgian law, one must be a graduate of a Belgian university five year course of study. There is some provision for recognition of U.S. education which usually amounts to

2 or 3 years of part time study at a Belgian university to get the Belgian degree. There is a mutual recognition directive which will mean EU law degrees will be recognized. But U.S. degrees still will not.

Denmark: Foreign lawyers in Denmark cannot offer advice to international clients on international issues without being a member of the local bar, face restrictions on whom the foreign lawyer or law firm may advise and also face restrictions on the use of the original business name as in its home country.

Foreign legal consultants are restricted in their ability to advertise, including restrictions on the use of letterhead or signs on office doors. These restrictions are not applied to attorneys licensed to practice Danish law.

There are restrictions on the ability of foreign lawyers to associate with Danish lawyers. Foreign attorneys may hire Danish attorneys in private firms but foreign attorneys who are appointed as attorneys by Denmark cannot own a Danish firm. Also foreign attorneys who do not also have appointment as Danish attorneys cannot be partners in a Danish legal firm.

To be an attorney in Denmark, a person must be A Danish legal school graduate and a clerk in a law firm for three years.

France: There is a nationality requirement to quality as an “avocat.”

Legal consultancy services in foreign and international law are required to be licensed in French law.

Non-EU firms are not permitted to establish branch offices in France under their own names. Also, foreign lawyers and firms are not permitted to form partnerships with or hire French lawyers.

Germany: There is a prohibition on foreign lawyers entering into professional associations with “rechtsanwalte.”

Foreign legal education is difficult to obtain. It is estimated that a minimum of three years of study and another three or four years of internship after law school would be necessary prior to taking the German Federal bar examination.

Residence and the maintenance of an office in the judicial district where the attorney is admitted are prerequisites to maintaining one’s status as a lawyer in Germany.

There are indirect citizenship requirements which are prerequisites for becoming licensed to practice German law. Also, residence and the maintenance of an office in the judicial district where the attorney is admitted are prerequisite to maintaining one’s status as a lawyer in Germany.

Italy: There is a citizenship requirement for admission to the Italian bar. In addition, U.S. lawyers cannot offer advice on foreign and international law without being licensed in the practice of Italian law.

Netherlands: Foreign lawyers are not permitted to form partnership with Dutch lawyers. In addition, a foreign lawyer established in association with a Dutch firm must have practiced in his home jurisdiction for at least three years and must agree to subject himself to the rules of ethics and supervision of the Dutch Bar Association.

Spain: There are nationality requirements to sit for the Spanish bar exam. Spain does not have a national bar exam nor do states (autonomous communities) give bar exams. Spanish graduates of approved law schools, once they are admitted to a state/regional bar association, a pro forma procedures, are entitled to practice law in that jurisdiction. Foreign graduates of approved law schools will receive national treatment provided reciprocity exists for a qualified Spaniard to practice law in the foreigner's country or state.

United Kingdom: The become a barrister, a litigator may be required to pass a one year diploma in law offered by certain polytechnics in London, complete a one year practical course at the Inns of Court School of Lw in London after joining one of the four Inns of Court, and complete a one year "pupilage" with a barrister in chambers.

To become a solicitor, a New York lawyer may be required to pass a one year diploma in law offered by certain polytechnics in London, complete a one year course for the solicitors' final examination and pass the examination, and complete a two year "articled clerkship" with a solicitor or firm of solicitors.

Accounting Services:

Austria: Citizenship is required to obtain a professional certification. Foreign accountants are not permitted to form a partnership with local firms. There are problems with using the international firm's name.

Belgium: There are difficulties obtaining fees as there are restrictions on fees to international firms.

Belgian nationals must be used on "Belgian Government consulting engagements.

Firms performing audit and attest work may not engage in ta practice, management consulting or accounting services.

Denmark: Foreign accountants cannot form partnerships with Danish accountants and hold majority shares in accounting firms without special authorization of Danish authorities.

There is a scope of practice limitation. A public accountant is not permitted to act as a liquidator or to arrange for a composition with creditors for a client.

France: There is a nationality requirement for establishment, which can be waived at the discretion of the French authorities. However, an applicant for such a permit must have lived in France for at least five years.

Germany: Accounting firms are not allowed to advertise their services.

Spain: In order for a foreign accountant from a non-EU country to obtain certification to participate in Spain, his country of origin must offer reciprocal treatment to EU firms.

United Kingdom: Recognition can be withheld for auditors with overseas auditing qualifications, unless reciprocal treatment is granted for U.K. accountants.

INVESTMENT BARRIERS

The EU has a growing role in defining the way in which U.S. investments in the Member States are treated. Although Member State governments traditionally were responsible for policies governing non-EU investment, in 1993 the Maastricht Treaty shifted competence over third country investment from the Member States to the Union. Member State barriers existing on December 31, 1993 remain in effect, but these may now be superseded by EU law. Direct branches of non-EU financial service institutions remain subject to individual member country authorization and regulation.

In general, the EU supports the notion of national treatment for foreign investors, and the Commission has traditionally argued that any company established under the laws of one Member State must, as a "Community company," receive national treatment in all Member States, regardless of its ultimate ownership. However, some restrictions on U.S. investment do exist under EU law and others have been proposed:

Ownership Restrictions

The benefits of EU law in the aviation and maritime areas are reserved to firms majority-owned and controlled by EU nationals.

Reciprocity Provisions

EU banking, insurance and investment services directives include "reciprocal" national treatment clauses, under which financial services firms from a third country may be denied the right to establish a new business in the EU if the EU determines that the investor's home country denies national treatment to EU service providers. In the recently adopted hydrocarbons directive, this notion may have been taken further to require "mirror-image" reciprocal treatment, under which an investor may be denied a license if its home country does not permit EU investors to engage in activities under circumstances "comparable" to those in the Union. It should be noted, however, that thus far no U.S.-owned firms have been affected by these reciprocity provisions.

International Negotiations

The French Government has withdrawn from the OECD's Multilateral Agreement on Investment (MAI) negotiations. The other EU member states were unwilling to continue participating in the negotiations after France withdrew, thereby ending the talks in that forum. France and Belgium are also seeking to limit OECD work on investment to elaboration of behavioral guidelines for multinational firms. These actions will no doubt hamper efforts to reach a broad-based agreement on principles for regulation of foreign investment, despite general EU support for such an agreement. The European Commission's legal competence over investment issues is evolving, but remains limited. In many instances, Member State practices are of more direct relevance to U.S. firms. EU Member States negotiate their own bilateral investment protection and taxation treaties, and generally retain responsibility for their investment regimes.

Member State Practices

Austria: Austria's 1993 Banking Act (as amended) presents a number of market entry obstacles to U.S. banks. While European Economic Area member states' banks may operate branches on the basis of their home country license, banks from outside the EEA must obtain an Austrian license to operate in Austria. However, if such a non-EEA bank has already obtained a license in another EEA country for the operation of a subsidiary, it does not need a license to establish branch offices in Austria. In addition, as of December 31, 1998, limits for single large loan exposures and open foreign exchange positions will decrease considerably for branches and subsidiaries of banks from non-EU countries. As of that date, the capital of their parent company may no longer be included in the capital base used to calculate loan and foreign exchange position limits.

France: There are no general screening or prior approval requirements for non-EU foreign investment. Notification requirements apply to foreign investments, EU and non-EU, that affect national defense, public safety, or public health. The government is able to exert influence over privatized firms through “golden share” provisions, establishment or incorporation. France continues to apply reciprocity requirements to non-EU investments in a number of sectors. For the purpose of applying these requirements, the French Government generally determines a firm's residency based on the residency of its ultimate owners rather than on the basis of the firm's place of establishment or incorporation.

Greece: Both local content and export performance are elements which are seriously taken into consideration by Greek authorities in evaluating applications for tax and investment incentives. However, they are not mandatory prerequisites for approving investments. Greece, which currently restricts foreign and domestic private investment in public utilities (with the exception of cellular telephony and energy from renewable sources, e.g. wind and solar), has deregulation plans for telecommunications and energy. As regards telecommunications, Greece has been granted a derogation until January 1, 2001 to open its voice telephony and respective networks to other EU competitors. In the energy field, the Greek energy market will be gradually deregulated, starting in February 2001. U.S. and other non-EU investors receive less advantageous treatment that domestic or other EU investors in the banking, mining, maritime and air transport sectors, and in broadcasting. There are also restrictions for non-EU investors on land purchases in border regions and certain islands (on national security grounds).

Portugal: Most foreign investments in Portugal are only subject to post facto registration. However, Portugal retains the discretion to limit foreign investment in state-owned companies being privatized on a case-by-case basis. To date, this prerogative has not been exercised.

ELECTRONIC COMMERCE

The trade in transactions via the Internet is likely to reach $ 300 billion by the year 2000. The American proposal presented at the WTO Council in February 1998 is that deliveries over the Internet should not be subject to custom duties. But in June 1998, the European Commission adopted a position on the taxation of electronic commerce (“E-commerce”), which is under discussion in the European Parliament and the Council. This document (COM(97)157 outlines the main principles of indirect taxation to be applied to such services. In Europe, a domestic Value-Added-Tax (VAT), distinct from an import duty, is payable on deliveries of goods and the provision of services. The Commission intends to adapt the existing VAT tax to electronic commerce, and to consider electronic commerce as the provision of a service. In this way, when electronic commerce involves products being supplied via electronic transmission, including the sale of “virtual goods”, it must be considered for VAT purposes as the provision of a service. The Commission aims to adapt its current VAT legislation so that services are taxed systematically within the Union when they are supplied for the purpose of being consumed there. However, where services are provided from within the Community in order to be consumed outside, they should not be taxed and input VAT should be deductible.

The United States has been concerned about changes to the EU 6th VAT Directive which allow Member States to levy a value-added tax (VAT) on offshore suppliers of telecommunications and online services (i.e., companies not established or with their principal place of business in the EU). For EU Member States to levy the VAT in this manner, suppliers of these services would become liable for the VAT on the basis of where their services are consumed and would be taxed as if they were established in the EU (versus the standard practice, applicable to European service suppliers, of levying VAT on the basis of where the service was supplied or corporation established). In its schedule of commitments in the General Agreement on Trade in Services (GATS), the EU has undertaken obligations to provide national treatment to value-added telecommunications services.

The European Consumers Organization (BEUC) expressed its objections to the Commission position on e-commerce taxation in its present form, demanding that consumer transactions be removed from the scope of the proposed text in favor of a more broad-based and collaborative approach, and it disagrees with the application of the law of origin as a universal principle for electronic transactions within the EU. It criticized the Commission's understanding of the nature of the present and future transactions over the Internet and its subsequent implications for consumers wishing to buy products via the Internet. The United States will continue to monitor this issue.

The EU Data Protection Directive (see above) has special implications for electronic commerce. An overly-restrictive interpretation of the ways in which data can be processed and transferred under the directive could stifle many forms of e-commerce, even if a significant cut-off of transatlantic data flows does not materialize.

The EU Commission has drafted a Directive on Digital Signatures which is under review by the Council and the Parliament. It is not clear as of the publication of this report what form the final version of this legislation will take, but there are concerns that it could lead to the creation of a cumbersome approval procedure for electronic authentication systems within the EU market, and possible limitations on the technologies which could be employed to authenticate electronic transactions.

OTHER BARRIERS

Data Privacy

The EU Data Protection Directive went into effect in October 1998. As of the date of this publication, only four EU Member States have transposed the directive into national law, although a number of others are poised to do so. The directive seeks to protect individual privacy with regard to the storage, processing and transmission of personal data, while still permitting the free flow of data within the EU. The directive allows the transmission of data to third countries if they are deemed by the EU to provide an adequate level of protection, or if the recipient can provide other forms of guarantee (e.g., a contract) that ensure adequate protection. U.S. firms are concerned by the lack of transparency in the definition of adequate protection and the potentially cumbersome arrangements for executing a data transfer. The U.S. Government is engaged in a dialog with the EU Commission on a possible solution involving an industry-led self-regulating system to protect personal data transferred between Europe and the United States.

GHANA

In 1998, the U.S. trade surplus with Ghana was $79 million, a decrease of $81 million from the U.S. trade surplus of $160 million in 1997. U.S. merchandise exports to Ghana were $223 million in 1998, a decrease of 28.9 percent from the level of U.S. exports to Ghana in 1997. U.S. imports from Ghana were more than $144 billion, an increase of almost 12 percent from the level of imports in 1997. The stock of U.S. foreign direct investment in Ghana amounted to almost $370 billion in 1997, a more than 9 percent rise from 1996.

IMPORT POLICIES

Since it began its structural adjustment program in the early 1980's, Ghana has progressively eliminated or reduced its import quotas and surcharges. Currently, tariff rates are being adjusted in harmony with the economic community of west African states (ECOWAS) trade liberalization program. Since the elimination of Ghana's import licensing regime in 1989, importers are now simply required to sign a declaration that they will comply with the Ghanaian tax code and other laws. Special permits, however, are still required for some imports. (These include drugs, mercury, gambling machines, handcuffs, arms and ammunition, and live plants and animals.) Ghana's tariff structure addresses capital goods, intermediate goods, and consumer goods. Only three *ad valorem* import duties are currently applied: 0 percent, 10 percent, and 25 percent. In addition, a specific duty of 10 percent to 40 percent is imposed on 16 types of merchandise including alcoholic and non-alcoholic beverages, tobacco, and textiles. These additional duties are intended to place the merchandise of local manufacturers on an equal competitive basis with imported goods. An attempt was made in 1996 to eliminate the supplemental duties but was abandoned due to administrative problems.

To develop competitive domestic industries with exporting capabilities, the Government of Ghana continues to support domestic private enterprise with financial incentives, tax holidays, and other similar programs. Nevertheless, Ghanaian manufacturers contend that the country's tariff structure places local producers at a competitive disadvantage vis-a-vis imports from countries that enjoy greater production and marketing economies of scale. Reductions in tariffs have increased competition for local producers while reducing the cost of imported raw materials. At the same time, the cedi has been relatively stable compared to the significant depreciation of previous years, thereby making imports more affordable. A value-added tax (VAT) at a rate of 10 percent was introduced on December 31, 1998, to replace the sales and services taxes. The government conducted an extensive public information campaign to explain the VAT and implementation and collection of the tax appear to be progressing with few problems. A previous attempt to introduce a VAT failed in 1995 over widespread protests.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Ghana has issued its own standards for food and Drugs under the auspices of the Ghana Standards Board, the testing authority which subscribes to accepted international Practices for the testing of imports for purity and efficiency. Under Ghanaian law imports must bear markings identifying, in English, the type of product being imported, the country of origin, the ingredients or components, and the expiration date, if any. The purpose of this law is to set reasonable standards for imported foods and drugs. Locally manufactured goods are subject to comparable testing, labeling, and certification requirements. Ghana also employs the services of four pre-shipment inspection (PSI) agencies for the review of imports for quality and price. To comply with the World Trade Organization Agreement on Definition of Values, PSI will be replaced by destination inspection in 2000. However, U.S. exporters have experienced difficulties working with Ghana's PSI regime, complaining of overstated PSI valuations, making customs clearance in Ghana difficult.

GOVERNMENT PROCUREMENT

Government purchases of equipment and supplies are usually handled by the Ghana supply commission (the official purchasing agency)through international bidding and, at times, through direct negotiations. Former government import monopolies have been abolished. Parastatal entities continue to import some commodities, although they no longer receive government import subsidies.

The Government of Ghana once controlled more than 300 state-owned-enterprises. By the end of 1998, more than 200 of these had been privatized. The political leanings of the Ghanaian partners of foreign investors are sometimes subject to government scrutiny. There are reports that the privatization of a government-controlled enterprise may be stalled if an interested party is known to be sympathetic to the political opposition.

EXPORT SUBSIDIES

There is no direct government subsidy of exports. however, concessionary credits and lower tax rates are not uncommon. The new export processing zone (EPZ) law, enacted in 1995, does not tax corporate profits for the first 10 years of business operation. As with non-EPZ exporting companies, in subsequent years the corporate tax rate is 8 percent compared to 35 percent for other non-exporting businesses.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Ghana is a member of the universal copyright convention, the World Intellectual Property Organization, the English-speaking African Regional industrial property organization, and the World Trade Organization (WTO) agreement on trade-related aspects of intellectual property rights (TRIPs). Holders of intellectual property rights have access to local courts for redress of grievances, although few trademark, patent, or copyright infringement cases have been filed in Ghana in recent years.

SERVICES BARRIERS

The investment code excludes foreign investors from participating in four economic sectors that are reserved for Ghanaians: petty trading, the operation of taxi and car rental services with fleets of fewer than ten vehicles, lotteries(excluding soccer pools), and the operation of beauty salons and barber shops.

In the recently concluded WTO negotiations on basic telecommunications services, Ghana made commitments for most basic telecom services, subject to the requirement that these services be provided through joint ventures with Ghanaian nationals. It retained duopoly for domestic and international services. Ghana has adopted the reference paper on regulatory principles.

In the financial services negotiations, Ghana has committed to allow 60 percent foreign ownership in terms of commercial presence. Ghana requires a high paid-in capital requirement for foreign firms, but allows them to provide a full range of services. Ghana has no barriers for electronic commerce, possibly because commerce is rarely used.

INVESTMENT BARRIERS

The 1994 investment code eliminates the need for prior project approvals by the Ghana Investment Promotion Center (GIPC). Registration, essentially for statistical purposes, is normally accomplished within five working days. Investment incentives are no longer subject to official discretion as they have been made automatic through incorporation into the corporate tax and customs codes. Incentives include zero rating import tariffs for plant and generous tax incentives. Immigrant quotas for businesses, though relaxed, remain in effect. U.S. direct investment in Ghana is predominantly in the mining and fabricated metals sector. There is also significant U.S. investment in the petroleum, seafood, telecommunications, energy, chemicals, and wholesale trade sectors. Wage rates in the metals and mining sectors are substantially higher than in other industries in the Ghanaian economy. U.S. and other foreign firms in Ghana are required to adhere to Ghanaian labor laws, including restrictions on the number of expatriates employed.

The high cost of local financing (with short-term interest rates currently at about 35 percent) acts as a significant disincentive for local traders and investors. Such high interest rates and a lack of liquidity in the financial system constrain industrial growth and inhibit the expansion of most Ghanaian businesses from their current micro scale operations. The legalization of foreign exchange bureaus has made foreign currency readily available in Ghana. In 1998, the cedi depreciated by about 5 percent, the lowest rate in a decade. Domestic inflation has fallen from 70 percent in 1995 to 15 percent in 1998. The bank of Ghana continues to pursue a tight monetary policy in an effort to contain inflationary pressures.

The residual effects of a drastically over-regulated economy and lack of transparency in government operations create an element of risk for potential investors. Bureaucratic inertia is sometimes a problem in government ministries, and administrative approvals often take longer than they should. Entrenched local interests sometimes have the ability to derail or delay new entrants and securing government approvals may be dependent upon an applicant's contacts. The government officially condemns corruption and is taking measures to address it. On balance, Ghana’s business climate is considered conducive to international commerce.

GUATEMALA

In 1998, the U.S. trade deficit with Guatemala was $131 million, a decrease of $131 million from the U.S. trade deficit of $262 million in 1997. U.S. merchandise exports to Guatemala were $1.9 billion, an increase of $213 million (12.3 percent) over 1997. Guatemala was the United States' 42nd largest export market in 1998. U.S. imports from Guatemala were $2.1 billion in 1998, an increase of $82 million (4.1 percent) from the level of imports in 1997.

The stock of U.S. foreign direct investment in Guatemala amounted to $357 million in 1997, an increase of 7.9 percent from 1996. U.S. direct investment is concentrated in manufacturing, agriculture, and finance.

IMPORT POLICIES

Guatemala is a member of the Central American Common Market (CACM), which also includes Guatemala, El Salvador, Nicaragua and Honduras. CACM members are working toward the full implementation of a common external tariff (CET), and with few exceptions there are no tariffs on capital goods originating within the CACM and a maximum tariff of 15 percent on other goods originating within the CACM. Guatemala’s tariffs on goods from outside the CACM range from zero to as high as 28 percent.

Poultry Tariff Rate Quota and Customs Valuation Policies for Poultry

In October 1996 Guatemala announced a new poultry import policy that expanded the annual Tariff Rate Quota (TRQ) from 3600 MT to 7000 MT with an in-quota tariff of 15 percent. This import policy exceeds Guatemala’s negotiated World Trade Organization (WTO) obligations for poultry imports. However, notwithstanding its agreement to employ transaction value to calculate tariffs on chicken parts as part of its Uruguay Round commitments, the Government of Guatemala (GOG) continues to use a reference price. For tariff purposes, poultry parts are valued at $.56 per pound, irrespective of actual invoice price. The use of this valuation effectively doubles the tariff on poultry imports. It is estimated that elimination of this valuation policy would increase US exports by up to $10 million per year.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Under Guatemalan law, food products sold in the domestic market must be tested, registered, and carry labels in Spanish. The law requires that every size or form of product sold be registered separately, even if the product content is of identical composition. Personnel trained and available to carry out this process are in short supply. Importers complain that the product registration and testing process, though not otherwise overly burdensome, is time consuming. Products are often damaged during the process and are susceptible to pilferage while awaiting completion of the tests and registration. Enforcement of the product registration and labeling requirement is irregular, but becoming more strict. If fully enforced, these requirements could restrict and/or delay the entry of an estimated $25 to $100 million of US exports.

GOVERNMENT PROCUREMENT

Though the Government Procurement Law requires all government purchases over $160,000 to be submitted for public competitive bidding to no fewer than five bidders, most government contracts are awarded without following prescribed procedures. Foreign suppliers must meet pre-qualification requirements and submit bids through locally registered representatives, a bureaucratic process which can place foreign bidders at a competitive disadvantage.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Guatemala's protection of intellectual property and the enforcement of existing laws and regulations is inadequate. Pursuant to Section 182 of the Omnibus Trade and Competitiveness Act of 1988 ("Special 301"), Guatemala was placed on the Watch List in 1998 because of its failure to solve copyright protection deficiencies, improve enforcement, and dismantle market access barriers. Guatemala's continuing failure to protect and enforce its laws shows an indifference to its international obligations and bilateral commitments.

Copyrights

Guatemala passed a new Copyright Law in 1998 that protects computer software programs, but there has been virtually no enforcement by government. Although the software industry has successfully brought some civil actions against resellers of pirated software, distribution and use of illegally copied software – including use by government agencies – is commonplace. In 1992 the GOG passed a law authorizing the establishment of a regulatory agency to police the cable television industry. However, the regulatory entity has not been established and regulation of this industry is insufficient to protect US rights holders. Piracy of signals by cable system operators continues, though the unauthorized retransmission of premium channels has diminished. Local broadcast channels occasionally re-transmit premium or pay-per-view events. A new law to regulate the cable TV industry was drafted in July 1997, but there has been no action taken in the legislature. A report prepared by the International Intellectual Property Alliance (IIPA) estimates that copyright infringements in Guatemala cost U.S. firms $24.5 million in 1998.

Patents

Guatemala's patent law (153-85) is out of date and deficient in several areas, including limits on protection to only fifteen years (10 years for food, beverages, medicines, and agrochemicals), broad compulsory licensing provisions, mandatory local manufacturing of the patented product, and a lack of protection against parallel imports. Enforcement of the law is limited. A number of subject areas are not patentable, including mathematical methods, living organisms, commercial plans, and chemical compounds or compositions. Guatemala does not provide exclusive marketing rights for pharmaceutical and agricultural products, which are subject to mailbox applications, as required by the TRIPS agreement.

Trademarks

Guatemala's law provides insufficient protection for owners of well-known trademarks. Exclusive rights are granted on a first-to-file basis, thus permitting third parties to register and use (or prevent genuine trademark holder from using) internationally known trademarks. Sales of counterfeit clothing and other merchandise are common in Guatemala. Though an amendment to Guatemala's Criminal Code has made it easier for license-holders or brand owners to initiate legal action against merchants who traffic in counterfeit merchandise, not all rights holders have sufficient resources to pursue civil actions against IPR violators.

SERVICES BARRIERS

Guatemala is overdue in providing to the World Trade Organization an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect. Majority foreign ownership in telecommunications services is not permitted. International traffic must be routed through the facilities of an enterprise licensed by the

Guatemalan Superintendency of Telecommunications. Commercial radio or television stations must have at least 75 percent Guatemalan ownership.

Guatemala has not given the WTO an acceptance necessary to bring into force its commitments under the Fourth Protocol to the General Agreement on Trade in Services, which embodies the WTO Basic Telecom Agreement. In December 1998 Guatemala suggested key changes to its Fourth Protocol commitments in a proposal to the WTO Council on Trade in Services. It is unclear at this time whether the WTO Council on Trade in Services will agree to the changes or, instead, request that Guatemala take whatever steps are necessary to accept the Fourth Protocol based on the commitments offered by Guatemala at the time the Basic Telecom Agreement was completed in February 1997.

Investment Barriers

Guatemala generally welcomes foreign investment and provides national treatment, though the complex and often confusing welter of laws, regulations, and red tape can sometimes be discouraging. The new Investment Law passed in 1998 addresses some of these issues, including providing for national treatment for foreign investors. However, restrictions on foreign investment remain in several sectors of the economy, including auditing, insurance, mineral exploration, forestry, and the media.

ELECTRONIC COMMERCE

There are no known tariff or non-tariff measures, burdensome or discriminatory regulations, or discriminatory taxation affecting electronic commerce.

GULF COOPERATION COUNCIL

This section of the report analyzes trade policies of the six member states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (U.A.E.)) of the Gulf Cooperation Council (GCC).

In 1998, the U.S. trade surplus with the GCC was $6.5 billion, an increase of $ 5.7 billion from the U.S. trade surplus in 1997. U.S. merchandise exports to the GCC were $15.3 billion, an increase of $1.8 billion (13.0 percent) from the level of U.S. exports to the GCC in 1996. U.S. imports from the GCC were $8.9 billion in 1998, a $3.9 billion decrease (30.8 percent) from the level of imports in 1997.

Recent figures indicate U.S. foreign direct investment (FDI) in Saudi Arabia had reached $8 billion in 1997. U.S. FDI in the U.A.E. was $682 million in 1997, up 14.8 percent from that in 1996. In the GCC as a whole, U.S. FDI is largely concentrated in the petroleum extraction, petrochemical, and manufacturing sectors.

Overview

The GCC is an economic and political policy-coordinating forum for its members. Since it cannot impose trade policies upon its member states, each is free to pass and enforce its own trade laws. However, there has been growing cooperation among GCC members on certain issues, such as intra-GCC investments, standards-setting, and intellectual property protection. More recently, the GCC has announced plans to establish a customs union in March 2001.

The United States favors strengthening regional integration efforts among GCC members, as well as enhancing U.S.-GCC economic and commercial ties. To this end, the U.S. Government engages in high-level economic policy talks with GCC members through the U.S.-GCC economic dialogue. The most recent meeting of the U.S.-GCC economic dialogue took place in September 1998 in Washington.

IMPORT POLICIES

Tariffs

The GCC leadership has for several years been considering the establishment of a unified tariff structure. At its December 1998 meeting, the GCC Council announced that such a customs union would come into force in March 2001. However, a number of issues remain unresolved. Currently, some GCC countries maintain tariffs of 15-20 percent on products similar to those produced locally. Saudi Arabia maintains a 12 percent tariff on most products but this can be raised as high as 20 percent for certain protected industries. The U.A.E., which is the regional commercial hub and has traditionally depended on foreign trade, continues to push for lower tariff rates throughout the GCC. As the GCC moves to harmonize its tariff schedule, there is concern that a "highest common denominator" approach could lead to higher tariffs for a variety of imported products. At the recently concluded December 1998 GCC Summit, however, leaders adopted a timetable which would establish a GCC customs union by 2001, and urged that agreement on a unified customs tariff be concluded by the end of 1999.

Of the GCC countries, Bahrain, Kuwait, Qatar, and the U.A.E. are members of the WTO. All four of these countries entered the GATT and WTO under simplified procedures, based on the United Kingdom's previous application to the GATT 1947 on their behalf. Saudi Arabia applied for WTO membership in early 1996. Negotiations for the terms of Saudi Arabia's accession are now under way. Similarly, Oman became an observer to the WTO in April 1995 and submitted its formal application for WTO accession in 1996. Negotiations for Omani accession are also currently under way.

Import Licensing

Except in Bahrain, varying degrees of licensing procedures are enforced to protect domestic industries or limit trade to nationals of GCC countries. In Saudi Arabia, the importation of certain articles is either prohibited or requires special approval from competent authorities. More specifically, restrictions are placed on the importation of alcohol, firearms, illegal drugs and pork products. The following products require special approval in Saudi Arabia: agriculture seeds, live animals, fresh and frozen meat, books, periodicals, movies, tapes, religious books and tapes, chemicals and harmful materials, pharmaceutical products, wireless equipment, horses, products containing alcohol, and natural asphalt. Kuwait currently restricts the importation of alcohol, firearms, and pork products. In the U.A.E., only firms with the appropriate trade license can engage in importation. In Oman, companies which import goods must be registered with the Ministry of Commerce and Industry. Information of certain classes of goods, such as alcohol, firearms, narcotics, and explosives require a special license, and media imports are subject to censorship.

Documentation Requirements

All GCC countries impose complicated, costly, and time-consuming import documentation requirements. For example, certain documents must be authenticated by the National U.S.-Arab Chamber of Commerce (or, in the case of U.S. goods destined for Saudi Arabia, by the U.S.-Saudi Business Council) and by the diplomatic mission of the importing country. In Oman, with the exception of food products, this authentication procedure is not required, if the importing company has an existing agency agreement with the U.S. exporter. In 1996, Oman began the process of simplifying customs clearance documentation to expedite the flow of goods and promote its ports and airports. For example, Arab League boycott certification is no longer required. Only Omani nationals, however, are permitted to submit documents to clear shipments through customs. Since July 1998, the UAE has required that documentation for all imported products must be authenticated by a UAE Embassy in the country of origin. There is an established fee schedule for this authentication. In the absence of the validation in the country of origin, the fee schedule will be applied by customs authorities when the goods arrive in the UAE.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The United States is increasingly concerned about certain restrictive GCC standards. In particular, shelf life standards are more strict than scientifically warranted and severely restrict imports of a variety of food products of interest to U.S. suppliers. Such standards also favor European companies, which face shorter shipping times than their U.S. counterparts.

The situation has deteriorated in recent years, as shelf life durations for a variety of food products have been shortened, in some cases by half, as GCC countries begin strictly to enforce Gulf Standard 150/1993, Part I. Lacking scientific justification, GCC shelf life standards appear to violate the WTO/SPS agreement. Their removal could significantly increase U.S. food exports to the region.

In Saudi Arabia, the Saudi Arabian Standards Organization (SASO) imposes shelf life requirements on food products. Over the past few years, SASO has shortened shelf life durations for baby foods, eggs, stuffed cookies, chilled meats, and some snack foods -- all products of interest to U.S. exporters. Some sources claim that SASO has shortened shelf life standards to protect Saudi Arabia's expanding food processing industry; Saudi Arabia has become self-sufficient in egg production, and is growing in importance as a biscuit and cookie producer.

In 1990, the United States entered into a highly successful arrangement with SASO to encourage cooperation in the development of standards. SASO's work frequently leads to the creation of regional GCC standards. The United States-SASO partnership, which includes a U.S. technical advisor in Riyadh funded by the U.S. Government, has led to greater transparency in the Saudi system and has increased opportunities for American exporters to comment on draft Saudi standards. SASO has already adopted ISO 9000 as approved standards for Saudi Arabia and acts as an accreditation body through the Quality Assurance Department. The 1993 NIST-SASO MOU was renewed in July 1997 for another three years. More recently in 1996, the United States National Institute of Standards and Technology (NIST) and the GCC countries concluded a memorandum of understanding (MOU) on standards, metrology, and technical assistance programs at the economic dialogue meeting in Bahrain.

In October 1995, Saudi Arabia initiated a pre-shipment certification program to monitor and control the quality of certain products imported into the country. The International Conformity Certification Program (ICCP) currently applies to 76 regulated consumer product lines. The ICCP is managed by Intertek Testing Services (ITS), which inspects and tests, on behalf of SASO, shipments bound for Saudi Arabia. The United States and many other exporting countries have questioned the manner in which the ICCP has been implemented. Problems include the lack of transparency, ad valorem fees, and favorable national treatment of local products manufactured in the Gulf Region. Recently, though, shipments valued at less than five thousand dollars have been exempted from compliance with ICCP regulations and in September 1998, Saudi Arabia’s Ministry of Commerce removed all food and agricultural products from the ICCP.

Standards and labeling issues are also a problem in many of the GCC countries. For example, telecommunications and computer equipment standards tend to lag behind market developments, which often results in government tenders that specify purchase of obsolete and more costly items. That said, the GCC plans to implement a system for registering companies that comply with international standard ISO 9000. The central accreditation organization will be the Gulf Standards and Metrology Organization (GSMO) for the GCC countries. An agency in each of the six countries will inspect factories, make recommendations, and issue registrations. The GSMO is negotiating with the EU to put the program in place, and the EU is sending experts to help the GCC in technical and training aspects of the program and to set up mutual recognition systems for certification and quality control mechanisms. In January 1998, a GCC standardization official reported that the GSMO had approved approximately 1000 unified standards for the GCC countries to date.

GOVERNMENT PROCUREMENT

Most GCC countries maintain preferential "buy national" policies and/or offset provisions requiring that a portion of major (and usually military) government tenders be subcontracted to local firms. Several GCC states actively support the creation of offset companies in diverse fields as part of defense procurement.

More specifically, Kuwaiti Government procurement policies specify the use of local products when available and prescribe a 10 percent price advantage for local firms in government tenders. Kuwait's offset program requires that foreign firms awarded government contracts with a single or cumulative value in any one fiscal year (July 1 to June 30) of kd one million ($3.3 million) or more, invest 30 percent of the contract value in an approved project in Kuwait, or an agreed third country. In 1997, Kuwait began applying the offset requirement to non-military contracts as well. Up until then, the scope of the offset requirement had been limited to military sales. This expanded coverage is a negative development that would represent a significant new barrier to expanded U.S. exports to Kuwait.

Saudi Arabian Government contracts on project implementation and procurement are regulated by several royal decrees which strongly favor GCC nationals. Most defense contracts, however, are negotiated outside these regulations. Under a 1983 decree, for example, contractors must sub-contract 30 percent of the value of the contract, including support service, to majority-owned Saudi firms. An exemption is granted in instances where no Saudi company can provide goods and services to fulfill the obligation. In addition, Article 1(d) of the tender regulations requires that Saudi individuals and establishments have preference over all other entities in government dealings. The same regulations also accord preference to "mixed" entities as long as Saudi nationals hold at least 51 percent of the mixed entities' capital. Article 1(e) gives preference to products of Saudi origin which satisfy the requirements of the procurement, even when the product specifications are inferior to those of a foreign counterpart. Saudi Arabia also gives priority in government purchasing programs to GCC products. These items receive up to a 10 percent price preference over non-GCC products in all government contracts contested by foreign contractors.

Oman provides a 10 percent price preference to tenders which use high local content in goods or services. Additionally, the government considers quality of product or service and support as well as cost in evaluating bids. For most major tenders, Oman typically notifies firms either already registered in Oman or preselected by project consultants. Bidders' costs soar when some award decisions are delayed, in some instances for years, or when bidding is reopened with modified specifications and typically short deadlines. Oman is known to have an offset program only with the United Kingdom, although the investment can originate from any country. Offsets are not standard adjuncts to government contracts and have not been associated with any U.S. defense transactions, whether commercial or foreign military sales.

The U.A.E. has no requirement that a portion of any government tender be subcontracted to local firms, but there is a 10 percent price preference for local firms on procurement and tenders. The U.A.E. requires a company to be registered in order to be invited to receive government tender documents. To be registered, a company must have 51 percent U.A.E. ownership. However, these rules do not apply on major project awards or defense contracts where there is no local company able to provide the goods or services required. Set up in 1990, the UAE's offset program required defense contractors with contracts worth more than $10 million to establish joint venture projects that yield profits equivalent to 60 percent of their contract value within a specified period of time (usually seven years). The projects must be commercially viable joint ventures with local business partners, and are designed to further the UAE objective of diversifying its economy away from oil. To date, more than 30 projects have been launched, including, inter alia, a hospital, an imaging and geological information facility, a leasing company, a cooling system manufacturing company, an aquiculture enterprise, and Berlitz Abu Dhabi - a language instruction center.

Qatar gives preferential treatment to contractors that include high local content in bids for government tenders. As a rule, bids must be submitted through local Qatari agents, but there are exceptions. For example, government procurement of defense equipment does not require use of local agents. However, local agents are often used, and have proven to be very useful in securing contracts. Qatar gives a 10 percent price preference to local firms and a 5 percent price preference to GCC firms in all government procurement.

In Bahrain, foreign firms are required to have a local agent or a local partner prior to bidding on a government contract. Construction companies biding on government construction projects must be registered with the Ministry of Works and Agriculture. The government makes major purchasing decisions through the tendering process with invitations being issued to selected, prequalified firms. Firms do not need to prequalify for smaller contracts.

EXPORT SUBSIDIES

While there appears to be no GCC-wide export subsidy program, certain member states have programs to support local industries that, in effect, equate to export subsidies.

Saudi Arabia contends that it has no export subsidy programs for industrial production. However, costs for establishing productive facilities in the industrial cities in Saudi Arabia are artificially low: land is available at little or no cost, utilities are priced below cost of production, and low interest loans are available from the Saudi industrial development fund. Because input prices are relatively low in Saudi Arabia, investment in the production of petroleum and related downstream products is comparatively attractive. The Saudi Government contends that low input prices reflect Saudi Arabia's low costs for domestic oil production.

Saudi Arabia began a substantial reduction in wheat production subsidies in 1993. The Grain Silos and Flour Mills Organization (GSFMO) controls wheat production by assigning production quotas to each of the country's grain farmers. Farmers can only receive government support prices within preassigned quotas. GSFMO production quotas in 1999 remain at 1.8 metric tons. This conforms with current policy to produce for domestic needs. Production support prices remain $400 per metric ton, a level still well above world prices.

The Oman Development Bank (ODB) provides export payment guarantees, at below local market rates, protecting Oman's relatively few non-petroleum exporters from payment problems on transactions, subject to ODB approval of buyer and country risk. The Omani Ministry of Commerce and Industry also offers soft loans to projects in the industrial, tourism , health, education, and service-related sectors. Formerly interest-free, these loans now charge about four percent interest. In addition, commercial banks now offer similar loans at 150-250 percent equity at eight percent interest, with five percent paid by the government.

Kuwait offers industrial subsidies similar to those of other GCC states. The Industrial Bank of Kuwait offers below market rate loans to local industry. Land is also provided at low cost, and imports of machinery and other goods are exempted from customs duties. Industries also benefit from low cost utilities.

Bahrain has phased out most industrial subsidies for export industries. The government permits the duty-free importation of raw material inputs for incorporation into products for export and the duty-free importation of equipment and machinery for newly established export industries. All industries in Bahrain, including export and foreign-owned firms, benefit from low-cost utilities.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Some progress has been made in recent years by GCC states in adopting laws and regulations protecting intellectual property. However, most of these laws are not yet TRIPs consistent and all of the GCC countries were identified in last year’s Special 301 review. The GCC Secretariat has declared the protection of intellectual property rights (IPR) to be a priority and is working to strengthen GCC laws in the six member states, especially in the area of patent protection. In this respect, the GCC has published a unified patent law. The GCC patent office, headquartered in Riyadh, began to accept patent applications in October 1998. Once a patent is registered with the GCC patent office, its owner is automatically afforded protection throughout all GCC member states. In addition, all GCC states have trademark laws although some are not effectively enforced. The GCC is reportedly interested in working on a unified trademark regulation, but no technical discussions or drafting has been attempted.

The GCC Secretariat has issued a patent law whose ultimate purpose is to create one patent system for the member states. The law has several significant TRIPs consistency problems, including a lack of protection for pharmaceuticals (products or processes for production) and biological inventions. In addition, the law contains a broad compulsory licensing regime. The GCC also has indicated its interest in eventually creating common trademark and copyright laws and regimes, although no progress has been made so far.

The GCC countries are in various stages of acceding to international intellectual property conventions, such as the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, and the Geneva Phonogram Convention. Saudi Arabia became a member of the Universal Copyright Convention on July 13, 1994. Bahrain became a signatory of the Berne and Paris Conventions on October 29, 1996. The U.A.E. has joined the Paris Convention for the Protection of Industrial Property. Oman acceded to the Parsi and Berne conventions in 1998, as part of its ongoing efforts to come into conformity with its TRIPs obligations. Qatar is not party to any of these conventions. All GCC states are members of the World Intellectual Property Organization (WIPO).

Despite the progress to date, IPR protection problems continue throughout the region due primarily to difficulties with enforcement. Pirated video cassettes, computer software, and sound recordings are available to varying degrees in all GCC countries. Counterfeit products such as clothing, auto parts, and household products are also widely available.

Saudi Arabia

As part of its effort to gain membership in the World Trade Organization, Saudi Arabia has embarked on a wholesale revision of its intellectual property laws to bring them into conformity with the Trade Related Intellectual Property Rights Agreement under the WTO (TRIPs). Saudi Arabia is working with the World Intellectual Property Organization to achieve TRIPs compliance. The U.S. has provided substantial input on these issues in bilateral meetings concerning Saudi Arabia’s WTO accession.

Saudi Arabia enacted copyright and patent laws in 1989. The United States has raised a number of concerns about the copyright law, the most important of which is that U.S. sound recordings are not clearly protected. Saudi Arabia claims that through its accession to the Universal Copyright Convention, it is obliged to protect U.S. and other non-GCC member works. However, the U.S. has asked Saudi Arabia to provide greater certainty on this issue, preferably through amending its legislation.

While Saudi Arabia's patent law provides a generally adequate legal basis for protection, its patent term and compulsory licensing provisions are not consistent with international norms, as set forth in TRIPs. The functions of the Saudi patent office also need to be substantially improved as the office has issued only 10 patents, and has a backlog of more than 6,000 applications. The recently established GCC patent office may substantially ameliorate this situation.

Saudi Arabia has made significant progress on copyright enforcement in the video and sound recordings market, particularly in clearing shelves in retail stores of pirated video and music cassettes. However, much of the pirated video and audio material has reportedly gone "underground" in Saudi Arabia, requiring new enforcement initiatives. Although Saudi Arabia has made some progress in discouraging the sale and use of pirated software, most notably through the 1998 agreement of major Saudi integrators that they would cease bundling pirated software in their products, U.S. software manufacturers are still seeking greater Saudi Government enforcement action against software copiers and end-users of unauthorized software, including government ministries.

The United Arab Emirates

The U.A.E. enacted copyright, trademark, and patent laws in 1992. The government is now working to amend the patent law to bring it into compliance with TRIPs, but progress has been slow. The U.A.E. patent law, currently being amended, protects pharmaceutical processes but not products. Due to confusion surrounding interpretation of protection for foreign works in the law, several recent court cases have resulted in acquittals for U.A.E. companies charged with violating U.A.E. federal copyright and trademark laws.

The U.A.E. Government has cracked down on piracy of audiovisual works and sound recordings. As a result, shops in the U.A.E. do not carry pirated audio/video works and sound recordings. Modern movie theaters have opened since September 1994 and show western movies obtained from licensed distributors. Pirated video products enter the country from neighboring Oman, but are not generally available in shops registered and licensed by government authorities.

The central government is also committed to countering computer software piracy, which is widespread. In 1996, the U.A.E. recorded the largest drop in software piracy worldwide. As a result, in mid-1997, the Minister of Information and Culture was honored by international software manufacturers for his commitment to combating software piracy. Recent press reports have provided extensive coverage of UAE raids on suspect entities, and have detailed UAE seizures of pirated goods. Large quantities of pirated goods have been destroyed and press coverage has been prominent.

Bahrain

Bahrain enacted a somewhat ambiguous copyright law in 1993, but has recently been aggressively and broadly enforcing it against copyright piracy in ways consistent with its WTO IPR obligations. It has been using the law to protect a wide range of intellectual property. Bahrain recently began a strong enforcement campaign to tackle video, audio, and software copyright piracy and has started closing stores and confiscating illegal copies; prosecution of pirates was set to begin in early 1998. Bahrain has a patent law, but it is not yet TRIPs consistent. Bahrain has patent offices that are grappling with a backlog of thousands of unprocessed applications.

Kuwait

Kuwait became a member of the World Intellectual Property Organization in April 1998. Kuwait continues to enforce ministerial decrees against copyright violations of U.S. and U.K. audio, video, and computer program materials pending passage of a TRIPS-consistent copyright law. A draft law has been with Kuwait's cabinet since April 1998. It was to be submitted to Kuwait's national assembly in February 1999, but continues to be delayed. Pending its passage and implementation, copyright protection is spotty. Piracy of audio and video materials is rampant. Some progress has been achieved in the computer software sector as a result of a Minister of Planning decree issued in April 1998 that banned the use of pirated software on government computers.

Kuwait has patent and trademark laws on the books, but only the trademark law is in effect. The patent law was passed in 1962 and is not TRIPs consistent. Enforcement of the trademark law is reasonably effective, but foreign trademark holders complain the registration and renewal process is burdensome and costly. Kuwait's Minister of Commerce established an inter-ministerial committee in June 1998 that was charged with reviewing all of Kuwait's IPR legislation and making recommendations on how to bring Kuwait into conformity with its TRIPs obligations. The committee submitted a draft report to the minister in September 1998 and is reportedly finalizing work on a draft patent law. Absent patent protection, pharmaceutical products have depended on Kuwait's strict drug registration criteria for protection against pirated-copies. The Ministry of Health issued in December 1998 a decree barring the registration in Kuwait of unauthorized copies of drugs still under patent in their country of origin. The decree takes effect June 1, 1999.

Qatar

Qatar's copyright law officially took effect on October 20, 1996, but after a recent government reorganization there is some uncertainty as to the status of the Copyright Bureau, which has been responsible for implementation of the law. Qatar provides no patent protection for any inventions, including pharmaceutical products. Qatar provides protection for trademarks registered with the Commercial Registration Department of the Ministry of Finance, Economy and Trade.

Oman

Oman issued a copyright decree in June 1996. However, protection of foreign works not registered in Oman remains in question and the decree has not been fully implemented to include computer software. The decree also provides no more than 25 years of protection, or the balance of protection under an existing international copyright, whichever period is shorter. This is not consistent with international standards. As of January 1, 1999, the government began enforcement of a ban on the sale of pirated audio and video cassettes, with inspection carried out by the local police. Since January 1, pirated audio and video cassettes have disappeared from local vendors' shelves, although sales of pirated software are still very much in evidence. The government has suggested that it will implement a similar royal decree banning sales of pirated software by June 30, 1999; however, as of early January, this decision had not been announced. Applicants for Internet access must, as part of their usage contract, pledge to respect international copyrights. Oman has no patent law, but points to its acceptance of GCC patent protection, which has not yet demonstrated its efficacy. Also, the Ministry of Health says it patent compliance when reviewing new import applications for pharmaceutical. U.S. industry, however, has raised concerns about this verification process.

SERVICES BARRIERS

Insurance

Most GCC countries discriminate against foreign insurance companies, generally by restricting foreign participation in the on-shore market (as in Kuwait), or by requiring operation through a local sponsor (as in Saudi Arabia and Oman). (Note, however, that a sponsorship requirement is not uniquely applied to insurance firms.) Moreover in Oman, in the insurance sector, as in all services except banking, foreign ownership may not exceed 49 percent. Foreign insurance companies can establish a presence in the U.A.E.

by operating a branch or representative office. This option allows 100 percent foreign ownership, but, in general, limits business activities to offshore operations. At present, Qatar bans the establishment of new insurance companies, and there is no indication the ban will be lifted soon. In December 1996, Bahrain issued a decree amending the country's insurance law to allow foreign companies to open life insurance businesses. The companies are being allowed to enter the life insurance sector because of a lack of local experience in the field. Prior to the new law, companies could establish only representative offices in Bahrain. Saudi Arabia has allowed insurance companies to operate in the Kingdom, but there is no insurance law governing the sector. The government is formulating a regulatory framework for insurance, but the timetable for the adoption and implementation of such regulation is uncertain. The central bank has assumed de facto jurisdiction over companies selling whole life insurance and similar investment products, requiring them to come under the control of financial institutions who are already subject to central bank regulation.

Banking

Banking activity in GCC states is subject to a variety of restrictions. Saudi regulations require that Saudi nationals own 60 percent of any bank. But, the Saudi Government has decided to allow GCC banks to open branches in the kingdom. In Kuwait, foreigners are permitted to own up to 40 percent of Kuwaiti banks. Bahrain continues as a regional financial services hub. It continues to issue new licenses to banks (11 in 1997), focusing on promoting the Islamic, offshore, and investment banking sectors. The traditional commercial banking sector remains saturated.

While Oman, Qatar, and the U.A.E. have laws permitting foreign banks to operate, these countries have barred new non-GCC banks from establishing operations on the grounds that their countries are "over-banked.” Despite 1997 GCC initiatives to facilitate GCC-based banks operating branches in other GCC states, no new foreign banks have begun operating in the UAE in the last few years. In the U.A.E., foreign banks may open representative offices. Oman does not permit representative offices. The U.A.E. and Oman do not permit offshore banking. Qatar does not allow foreign banks operating in the country to open branch offices; this right is restricted to Qatari-owned banks.

Shipping

Kuwait has prevented foreign shipping lines access to government project cargo by granting the United Arab Shipping Company the right of first refusal on all such cargoes. Kuwait, however, no longer applies this requirement to shipments from U.S. ports. Bahrain continues to favor the United Arab Shipping Company on cargo contracts for government projects. Saudi Arabia gives preferences to national carriers for up to 40 percent of government cargoes. Under these rules, the Saudi national shipping company and United Arab Shipping Company receive preferences.

INVESTMENT BARRIERS

Foreign equity is limited to 49 percent in Kuwait, Qatar, and the U.A.E., although the U.A.E. has exempted the Jebel Ali and other free zones from this barrier. Products entering the U.A.E. from the free zone are treated as foreign products. The 49 percent limit on foreign equity in Qatar can be overcome by the issuance of an emiri decree.

Oman provides national tax treatment for joint venture public shareholding firms with no more than 49 percent direct foreign investment. Corporate tax rates on net profits have dropped from 50 percent to no more than 30 percent for most other forms of foreign investment. The Sultanate is reviewing and modifying its laws and procedures as it seeks to increase Oman's attractiveness as a site for foreign investment, particularly in joint ventures. Special authorization is required for projects with majority direct foreign ownership. Five year, one-time renewable tax holidays can initially offset higher tax rates imposed on firms not granted national tax treatment.

Kuwait currently maintains restrictions on foreign investment, including limits on foreign ownership (a maximum of 49 percent in general, and 40 percent in the banking sector) and discriminatory taxation policies (see below). The government forwarded in June 1998 a proposed foreign investment law that would allow majority foreign ownership of Kuwaiti companies and in some circumstances up to 100% foreign ownership. It also offers up to a 10-year tax holiday for new investors. The law has passed committee in the national assembly and may be approved by the full assembly before its adjourns in July 1999. A free trade zone, in which many of the above restrictions would not apply, is in the initial stages of being set up and should become operational in 1999.

While Saudi Arabia maintains no legal restrictions on the share of foreign ownership, under current policy wholly foreign-owned investment contracts are rare. Moreover, Saudi Government incentives such as tax holidays and Saudi industrial development fund lending normally are not available unless there is at least 25 percent Saudi ownership. The foreign capital investment regulation requires that foreign investment be made consistent with the nation's development priorities and that investments include some technology transfer. Foreigners may not invest in joint ventures engaged solely in advertising, trading, distribution, or marketing. Real estate ownership is restricted to wholly-owned Saudi entities or citizens of the GCC. Foreign equity is taxed at a maximum rate of 45 percent of profits; Saudis are not subject to a tax on profits, although they do pay a wealth tax ("zakat"). Saudi Arabia is currently undertaking a revision of its foreign investment code.

Bahrain is discussing allowing 100 percent foreign equity ownership of direct investments but currently permits this only on a case-by-case basis. Oman permits 100 percent foreign ownership on a case-by-case basis, as well with approval of the Council of Ministers.

Only GCC nationals are permitted to invest in local real estate throughout the GCC. Foreign investment in publicly traded Saudi Arabian companies is possible through a mutual fund listed in the United Kingdom. In Bahrain, expatriate residents with more than one year's residence may purchase stocks in some publicly traded companies under certain circumstances. While foreigners are prohibited from purchasing shares of individual companies on the UAE stock exchange, they are permitted to purchase a limited number of shares of certain mutual funds.

ELECTRONIC COMMERCE

Electronic commerce is in its nascent stages of development in GCC countries. All GCC WTO members -- Kuwait, Bahrain, Qatar, and the UAE – supported the U.S. proposal for a WTO standstill on imposition of new customs duties or other charges on electronic commerce. All of the GCC countries try to restrict or discourage local access to websites that offer pornographic or other materials offensive to Islamic values.

OTHER BARRIERS

Agent and Distributor Rules

In GCC countries, U.S. firms may find that compliance with U.S. law presents special challenges when selecting a local agent. Termination of agency agreements can be difficult in all the GCC countries and may involve considerable financial losses to the foreign supplier.

Saudi law requires that in-country distributors be licensed by the Ministry of Commerce. Only Saudi citizens can obtain licenses, although a recent GCC decision may broaden this to include GCC citizens. Direct sales are possible except in the case of sales to government agencies, where a "service agent" is required.

The U.A.E. permits two types of commercial entities to import and distribute products. One is a 100 percent U.A.E.-owned business and the other is a limited liability company in which foreign ownership up to 49 percent of equity is permitted. All U.A.E. commercial agents must be registered with the Ministry of Economy and Commerce. U.S. exporters seeking U.A.E.-wide coverage must appoint a separate agent for each of the seven emirates, or appoint a master agent with offices or sub-offices in each emirate. Once chosen, agents/distributors have exclusive rights, and are extremely difficult to replace without their agreement.

Since September 1996, Oman registers non-exclusive agency agreements. Since 1993, Oman has permitted an importer to bring in goods without paying a commission to a registered agent, provided that the goods are imported through an Omani port or airport. In practice, however, it is difficult for a foreign firm to sell directly to the government without an Omani agent scouting for and bidding on tender opportunities. In addition, termination of an agency agreement can be difficult, as a supplier may not unilaterally terminate an agency agreement without a justifiable branch of the agency agreement by the agent.

Local agents are currently required in all sales transactions in Kuwait. However, the government is discussing elimination of agency requirements in its military procurement contracts.

Bahrain is planning to update its commercial agency law to eliminate the sole agency requirement, bringing Bahrainis practices in line with its WTO obligations.

Corporate Tax Policies

Saudi Arabia and Kuwait tax foreign companies but not domestic entities. Additionally, several GCC countries tax royalties as if they were 100 percent profit and maintain a variety of other tax policies considered to be unfair to foreign companies. The U.A.E., for example, imposes a 20 percent income tax on foreign banks. No tax is levied on domestic banks. Since January 1997, Oman provides national tax treatment to joint venture public shareholding firms with no more than 49 percent direct foreign investment: i.e., a maximum rate of 12 percent tax on net profits. The Omani branch of a foreign firm is regarded as an Omani firm for purposes of computing the 51 percent Omani ownership of the joint venture. Taxes were reduced from a maximum rate of 50 percent to 30 percent for other categories of joint ventures. These rates do not apply to foreign petroleum companies, which pay royalties per their concession agreement. Oman now levies a 10 percent tax on services performed offshore for Omani firms. In Saudi Arabia, foreign investors may receive incentives, including a ten-year tax holiday, for approved agricultural and manufacturing projects with a minimum 25 percent Saudi participation. However, foreign equity investors in joint venture are taxed at a maximum of 45 percent of profits. Saudi Arabians are not taxed on income. Qatar levies corporate income taxes at rates from 5 to 35 percent of net profits earned by foreign firms in Qatar. While no income tax is charged to Qatari owned firms to Qatari shareholders of joint ventures, foreign firms only avoid income taxes through the issuance of an emiri decree. Kuwait currently imposes a maximum income tax rate of 55 percent on foreign firms doing business in Kuwait. Kuwaiti corporations are not subject to income tax, but are subject to a mandatory 5 percent "zakat" contribution. Kuwait has announced plans to lower the maximum tax rate to 30 percent, but implementing legislation has not yet been submitted to the national assembly. Bahrain has no personal or corporate taxation, except on oil company profits.

Procedural and Financial Irregularities

Procedural and financial irregularities can be significant barriers to trade in GCC countries. Such irregularities have resulted in lost opportunities for U.S. suppliers of goods and services and have forced some U.S. businesses out of some markets. Disregard of irregularities may subject U.S. citizens or companies to prosecution under the Foreign Corrupt Practices Act (FCPA).

In August 1996, Kuwait passed Law Number 25, requiring disclosure of all commissions and other payments made in relation to securing a government contract valued at 100,000 Kuwaiti dinars or more (approximately $335,000). It is hoped that Law 25 will increase transparency in the government's procurement practices, but the jury is still out regarding its effectiveness.

On September 30, 1994, the GCC announced that it would end its adherence to the secondary and tertiary aspects of the Arab League boycott of Israel, eliminating a significant trade barrier to U.S. firms. In January 1996, Oman and Israel signed an agreement to open trade missions in the other country. In April 1996, Qatar and Israel agreed to exchange trade representation offices. Israel opened its office in May 1996. In March 1996, the GCC reiterated its commitment to end the secondary and tertiary boycott, and recognized the "total dismantling of the Arab boycott of Israel as a necessary step in advancing the peace process and promoting regional cooperation in the Middle East and North Africa." Although all GCC states are complying with these stated plans, some commercial documentation continues to contain boycott language; consequently, U.S. companies must notify the U.S. office of antiboycott compliance. Since the adoption of these policies, the incidence of boycott language in commercial documentation is decreasing (see the Arab League chapter for further information).

Kuwait no longer applies a secondary boycott of firms doing business with Israel and has taken steps to eliminate all direct references to the boycott of Israel in its commercial documents. Kuwait still applies its primary boycott of goods and services produced in Israel.

Most recent data indicate that the number of prohibited boycott requests in the U.A.E. continues to drop. It is believed that these cases stem from bureaucratic inefficiencies, rather than from a desire to circumvent U.A.E. Government stated policy terminating adherence to a secondary/tertiary boycott. The embassy continues to work closely with the U.A.E. Government to eliminate these requirements.

Oman no longer enforces compliance with the boycott. Although the Omani trade representative was recalled in late 1996 and not replaced in 1997, Oman and Israel maintain trade offices in each other's country, with an Israeli representative resident in Muscat. Omani customs processes Israeli-origin shipments entering with Israeli customs documentation. Likewise, Israeli immigration stamps in third country passports are not an issue. Telecommunications links and mail flow normally. That said, Omani firms have shied from carrying any identifiably Israeli consumer products. Normal commercial ties await more favorable developments in the Middle East peace process throughout the GCC.

HONDURAS

In 1998, the U.S. trade deficit with Honduras was $222 million, an increase of $87 million from 1997. U.S. merchandise exports to Honduras were $2.3 billion, an increase of $309 million (15.4 percent) over 1997. Honduras was the United States' 38th largest export market in 1998. U.S. imports from Honduras in 1998 were $2.5 billion, an increase of $223 million (9.6 percent) from the 1997 level. The stock of U.S. foreign direct investment (FDI) in Honduras in 1997 was $183 million, concentrated largely in the manufacturing and service sectors.

IMPORT POLICIES

Tariffs

Honduras is a member of the Central American Common Market (CACM), which also includes Costa Rica, El Salvador, Guatemala and Nicaragua. CACM members are working toward the full implementation of a common external tariff (CET) ranging from 1 to 19 percent for most products. In 1995, the members of the CACM agreed to reduce the CET to between zero and 15 percent, but allowed each member country to determine the timing of the changes. With the exception of certain items, there are no duties for products traded among CACM members. In 1997, tariff rates were reduced to one percent on capital goods, medicines and agricultural inputs, and on raw materials and inputs produced outside of the Central America region. Honduras also intends to reduce its extra-regional tariffs for other goods (intermediate and finished) over the next several years to between 10 and 17 percent.

Agricultural Price Bands

Honduras implemented a price band mechanism for yellow corn, sorghum, rice and soybeans in August 1992. In recent years, corn flour has also been added to the list of products subject to this tariff mechanism. Similar to the price band mechanisms of other countries in the region, the Government of Honduras (GOH) calculates the price band from a time series built on international prices for the prior 60 months on a given product. Imports entering with values within the defined band are assessed a 20 percent tariff. Imports entering with prices above the band are assessed lower duties, according to a predetermined schedule; those imports priced below the band are assessed a higher tariff. Recently the GOH has added a seasonal restriction to the price band. From September to January the minimum allowable duty is 20 percent for corn and 15 percent for all other products. From February to August duties are allowed to fluctuate freely according to the predetermined duty tables of each commodity. This seasonal restriction has been added to provide additional protection to local grain farmers during the main harvest. The United States has strongly opposed this policy, which limits access of U.S. agricultural products.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Although Honduras has eliminated all import licensing requirements, imports of certain key U.S. agricultural products continue to be blocked or limited by phytosanitary and zoosanitary restrictions. Restrictive zoosanitary requirements have blocked U.S. poultry imports for several years. Honduras has also blocked imports of rough rice from the United States by imposing arbitrary phytosanitary requirements which could not be met by U.S. suppliers. After nearly a year, the GOH finally lifted the restriction, but only after the local harvest had passed. More recently, the GOH has begun requiring that U.S. corn shipments to Honduras be inspected at the port of origin by a Honduran official. Although this new requirement does not entirely block U.S. corn shipments to Honduras, it does create a burden to the import process and adds to its cost as well. Frequent changes in sanitary and phytosanitary requirements are seldom reported to the WTO as required, and create a great deal of uncertainty among U.S. suppliers and Honduran importers.

Honduran law requires that all processed food products be labeled in Spanish and registered with the Ministry of Health. The laws are inconsistently enforced at present. However, these requirements may discourage some suppliers.

GOVERNMENT PROCUREMENT

The Government Procurement Law (Decree No. 148.5) governs the contractual and purchasing relations of Honduran state agencies. Under this law, foreign firms are given national treatment for public bids and contractual arrangements with state agencies. In practice, U.S. firms frequently complain about mismanagement and lack of transparency of governmental bid processes. These deficiencies are particularly evident in public tenders in telecommunications, pharmaceuticals and energy.

After Hurricane Mitch in October 1998, Congress passed an emergency law allowing the Government to dispense with the normal bidding process and execute direct purchases in reconstruction-related projects. The government is exploring options for a consolidated bidding process for reconstruction related projects.

LACK OF INTELLECTUAL PROPERTY PROTECTION

In 1998, Honduras was placed on the "Watch List" category of the U.S. Government's annual Special 301 Review. A report prepared by the International Intellectual Property Alliance (IIPA) estimates that copyright infringements in Honduras cost U.S. firms $8.3 million in 1997. There is widespread piracy of many forms of copyrighted works -- movies, sound recordings, software. The illegitimate registration of well-known trademarks has also been a problem. Honduras saw a portion of its trade preferences under the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI) suspended on April 20, 1998 because of its failure to control broadcast television piracy. However, these benefits were restored on June 30, 1998 following government action to suspend and fine the offending stations. In December 1998, the government reaffirmed its commitment to comply fully with the Trade Related aspects of Intellectual Property Rights (TRIPS) Agreement by the January 1, 2000 deadline. Progress is being made in the negotiation of a bilateral IPR agreement with the United States.

Copyrights

The piracy of books, sound and video recordings, compact discs, computer software and television programs is widespread in Honduras. Despite some progress, copyright protection remains problematic. A TRIPS-compliant reformed copyright law should be presented to Congress in early 1999.

Patents

The patent law enacted in September 1993 provides patent protection for pharmaceuticals, although the term of seventeen years from the date of application must be extended by at least three years to meet international standards. Honduran law contains overly broad compulsory licensing provisions and provides no protection for products in the pipeline. A TRIPS-compliant Central American patent and trademark treaty is pending before the Congress.

Trademarks

The illegitimate registration of well-known trademarks is a persistent problem in Honduras, in spite of 1993 modifications to the trademark law.

SERVICES BARRIERS

Honduras is overdue in providing to the WTO an acceptance of the Fifth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on financial services into effect.

INVESTMENT BARRIERS

Several restrictions exist on foreign investment in Honduras, despite the 1992 investment law. For example, special government authorization is required for foreign investment in the following sectors: forestry, telecommunications, basic health services, air transport, fishing and aquaculture, exploration of sub-surface resources, insurance and financial services, private education services, and agriculture and agro-industrial activities exceeding land tenancy limits established by the Agricultural Modernization Law of 1992 and the Land Reform Law of 1974. The law also requires Honduran majority ownership in certain types of investment, including beneficiaries of the National Agrarian Reform Law, commercial fishing and direct exploitation of forest resources and local transportation.

Honduran law also prohibits foreigners from establishing businesses capitalized at under 150,000 lempiras (about $11,000). In all investments, at least 90 percent of a company's labor force must be national, and at least 80 percent of the payroll must be paid to Hondurans. Finally, while a one-stop investment window has been instituted in the Ministry of Industry and Trade to facilitate investment, the Ministry has not provided complete information or assistance to the foreign investor. The newly-formed Tourism Ministry has tried to facilitate foreign investment, and in December 1998 Congress passed the first vote (of two required) of a constitutional amendment to allow foreign ownership of coastal land for tourism development purposes.

Since the disaster caused by Hurricane Mitch Honduras has redoubled its efforts to provide a favorable climate to foreign investment. In the last two months of 1998, Congress passed legislation reforming the mining code; allowing concessional operation of airports, seaports, and highways; providing incentives for renewable energy projects (many by U.S. investors); allowing foreign tourism development in coastal areas; and, allowing unrestricted sale of agricultural land regardless of size. Congress earlier passed a law authorizing the sale of 50 percent of the state-owned Honduran telephone company (HONDUTEL) to a foreign partner and the auctioning of band B cellular service. The Government also pledged to accelerate the privatization of the National Electric Company's (ENEE) distribution system.

Historically, U.S. firms and private citizens have found corruption to be a problem and a constraint to foreign direct investment. Corruption appears to be most pervasive in the following areas: government procurement, performance requirements, the regulatory system, and the buying and selling of real estate, particularly land titling. In May 1998, Honduras ratified, adopted and opened for signature the Inter-American Anti-Corruption Convention.

A Bilateral Investment Treaty (BIT) signed with the U.S. in 1995 was ratified by the Honduran Congress and is expected to be sent to the U.S. Senate for ratification in 1999. Provisions for bilateral investment are included in commercial treaties Honduras is negotiating with Costa Rica, El Salvador, Guatemala, Panama and the Dominican Republic. In addition Honduras, along with Guatemala and El Salvador, are in the process of negotiating a free trade agreement with Mexico that is expected to include investment provisions. The GOH also has bilateral investment agreements with the UK and Spain.

ELECTRONIC COMMERCE

There is no electronic commerce conducted within Honduras, though several companies are exploring possibilities and Internet users can make purchases from companies in other countries. There are no known barriers to electronic commerce.

HONG KONG

In 1998, the U.S. trade surplus with Hong Kong amounted to $2.4 billion, about half of the U.S. trade surplus with Hong Kong during the previous year. U.S. exports to Hong Kong were $12.9 billion: imports from Hong Kong were $10.5 billion. Hong Kong was the United States' 14th largest export market in 1998. The stock of foreign investment in Hong Kong rose to $19.1 billion in 1997, up from $14.7 billion in 1995. U.S. direct investment in Hong Kong is largely in the services and financial sectors.

Overview

On July 1, 1997 Hong Kong became a special administrative region (SAR) of the People's Republic of China (PRC). Under the PRC's policy of "one country, two systems", Hong Kong is to enjoy a "high degree of autonomy" from the PRC in managing its trade, financial, social, legal, and other internal matters for fifty years.

Although the PRC has assumed responsibility for conducting foreign affairs and defense matters for the SAR, Hong Kong remains a separate customs territory with all of its previous border and customs arrangements. As a separate customs territory with autonomy in the conduct of its economic, trade, and financial policies, Hong Kong retains independent membership in economic organizations, such as the World Trade Organization and APEC.

Along with others in the region, Hong Kong's economy has suffered over the past year, registering a decline of around 5.1% in GDP in 1998 and expectations of flat growth for 1999. The government recorded a modest fiscal deficit for 1998 of $ 4.2 billion, and projects a similar deficit for 1999. Nonetheless, Hong Kong enjoys a number of positive factors, including accumulated personal wealth from several years of unprecedented growth, massive fiscal and foreign exchange reserves, virtually no public debt, a strong legal system, and a strong and rigorously-enforced anti-corruption regime. The lengthening of the recovery period and the need for restructuring, as Hong Kong's advanced, high-cost, service-based economy continues to evolve, pose difficult challenges and choices for the Hong Kong Government.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Hong Kong has made significant progress over the past year to address the problem of piracy, including passaged of the Prevention of Copyright Piracy Ordinance, closing approximately 70 pirate CD production lines, and closing shops dealing with pirated products in major retail arcades.

Pirated product remains readily available in Hong Kong at the retail level. Significant new steps must be taken in the near future to address effectively the problem of piracy. In addition, steps much be taken to put an end to criminal corporate end user software piracy and hard disk loading piracy. Moreover, we have continuing concerns about the very large volume of optical medial production capacity. U.S. officials have asked the HKSAR to take effective actions to ensure that these facilities are producing only legitimate product.

ANTICOMPETITIVE PRACTICES

Opening telecommunications markets in Hong Kong has been the subject of intense debate over the last year. Substantial liberalization has been achieved; however, in February, the Hong Kong Government once again put off a decision on whether to issue additional licenses for the local fixed telecommunications network market. Politically powerful existing telecommunications companies, including the dominant operator Hong

Kong Telecom, have lobbied hard to keep out additional competitors. The decision to postpone further liberalization will restrict facilities based telecommunications competition in Hong Kong, and keep phone rates high than in other regional markets.

HUNGARY

In, the U.S. trade deficit with Hungary amounted to $1.1 billion in 1998 (or $493 million more than the deficit in 1997). U.S. merchandise exports to Hungary in 1998 were $482 million, a decrease of approximately $3 million (1 percent) from the previous year. Hungary was the United States' 68th largest export market through November 1998. U.S. imports from Hungary amounted to $1.6 billion in 1998, an increase of $489 million (45.4 percent). U.S. and Hungarian bilateral trade figures differ dramatically due to country-of-origin distinctions in exports. Such distinctions are especially apparent with products whose final assembly occurs in Hungary, particularly computer equipment (estimated $800 million of recorded imports). Although Hungary remains a middle-income country with substantial regional disparities, it has been transformed into a market economy with an elaborate legal and regulatory framework based on those of developed Western economies. U.S. foreign direct investment (FDI) in Hungary from 1989 to the end of 1998 surpassed $6 billion. The total FDI in Hungary during this time consisted of an estimated $18.5 billion. Hungary is a leading recipient of U.S. investment in Central and Eastern Europe.

IMPORT POLICIES

As part of Hungary's transition from a communist to a free-market economy, import policies were liberalized rapidly after 1989 to encourage competition and to allow imports necessary for restructuring. Almost 96 percent (by value) of products can be imported without an import license. A license is required to import precious metals, military goods, and certain pharmaceutical products.

The progressive implementation of Uruguay Round agreements has generally improved U.S. market access to Hungary. Under these agreements, Hungary must eliminate quotas on textiles, clothing, and other industrial products by 2004. As of January 1, 1998, Hungary eliminated their Global Consumer Import Quota with respect to WTO member countries and import quota licenses for WTO member-states' imports of new vehicles with engine capacity greater than 1500 cc, apparel, medicine, used clothes, string and thread, carpets, and those types of radio receivers not produced in Hungary. Import quotas, totaling $408 million in 1998, applied to jewelry, a handful of industrial products, and (for non-WTO members only) apparel and carpets. Only about 60-70 percent of quotas are utilized and in 1998, not one was fully utilized. However, administrative difficulties in securing licenses affected a U.S. footwear firm importing from the Far East.

The Hungarian Government allocated import licenses for up to 68,000 new and 63,000 used cars in 1998. However, these figures are well above the actual number imported. The Customs Duty Law of 1995 forbids the importation of used cars over six years old. Specialized older vehicles may still be imported after passing a technical test. These regulations, combined with standards for used cars which tend to exclude older U.S. models, effectively curb most used car imports from the U.S.

In 1995, Hungary raised many agricultural tariffs to Uruguay Round binding ceilings and introduced numerous tariff-rate import quotas assigned to most-favored nation (MFN) or preferential suppliers.

Hungary's average most-favored nation (MFN) import duties have been cut from 13.6 percent in 1991 to eight percent in 1998, in accordance with its Uruguay Round commitments. Under Hungary's 1991 Association Agreement with the EU, and subsequent accords, tariffs for industrial imports from the EU are being eliminated by the end of 2001. The result has been that many U.S. products are subject to notably higher tariffs than are EU products. By the end of 1998 only about 45 percent of the products originating from the EU remained dutiable. At the beginning of 1999, the tariffs on the remaining industrial products were reduced to 30 percent of the basic duty. By 2001, duties on these industrial products will be abolished entirely. Some tariffs on non-industrial EU products have also been reduced on a selective basis. Several

U.S. exporters (e.g., of aircraft, autos, electrical generating equipment, chocolate and non-chocolate confections, distilled spirits, wine, commercial laundry equipment, and soda ash) have expressed concern over the tariff preferences provided to the EU by Hungary, because of the growing disparity with MFN rates. Hungary applies a high duty of 72 percent ad valorem on imported alcoholic beverages and 30-70 percent ad valorem duties on chocolate and confectionary products. The USITC (United States International Trade Commission) is currently studying the effects of such preferences on U.S. exports. Its findings are due in April 1999.

On January 1, 1997, the government eliminated a two percent statistical fee and one percent customs clearance fee for WTO member states. Fees totaling five percent, however, are still required of goods coming from non-WTO states. Under the Pan-European cumulation system and Pan-European Free Trade Zone, effective in Hungary since July 1, 1997, customs duties on the imported content of goods subsequently exported under preferential trade agreements are no longer refunded. However, content from any member state can accumulate to qualify for preferential treatment. Duties and fees on re-exported content are no longer refunded as of July 1, 1997 for non-EU importers. This change has adversely affected certain U.S. industries (e.g., lumber and veneer producers). Firms exporting from Hungary with inputs from non-WTO members (such as Russia) were faced with greater costs and additional customs fees. An American aluminum processor, for which unrefunded fees would have totaled over $5 million per year, secured an 18-month waiver of these fees in August 1997, but its long-term status remains unclear.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Importers must file a customs document with a product declaration an, present Hungarian certified documentation from the Commercial Quality Control Institute upon importation. This permit may be replaced by other national certification and testing agency documents, such as those of the National Institute for Drugs. Some standards are reciprocal with those of recognized U.S. standards enforcement agencies.

Animal and Plant Health Regulations

Hungarian import regulations limits and delays imports of breeding animals, livestock semen, planting seeds, and new plant varieties. The process of registration and testing of new plant varieties imported is time-consuming and costly. In 1998, U.S. and other exporters of bovine semen secured modification of restrictive practices and fees on imports affecting a potential market of $1 million per year for U.S. firms.

In 1998, Hungary adopted legislation governing genetically-modified organisms (GMOs) in agriculture which, in following EU practice, imposes unnecessary restraints on imports primarily affecting new plant varieties. The Ministry of Agriculture could minimize these restraints with a flexible regulatory regime. Although the market for seed imports is relatively small (est. $18 million in 1998), U.S. firms in Hungary produce seed and plant stock for other markets. Full liberalization of the GMO policy could mean additional U.S. exports in the $10-25 million range.

GOVERNMENT PROCUREMENT

Foreign access to government-funded construction and service or supply contracts is regulated by the 1995 Act on Public Procurement, which improved transparency. Tenders must be invited for the purchase of goods worth over 10 million forints (currently 215 forints equal one dollar). However, bids with more than 50 percent Hungarian content are considered equal to majority-foreign bids that are up to 10 percent lower in price. Purchases deemed to be related to state security, as well as purchases of gas, oil, and electricity, remain exempt from these regulations. Hungary is not party to the WTO Government Procurement Code, and some

U.S. firms have taken legal action against non-transparency and procedural irregularities in government tenders.

EXPORT SUBSIDIES

While Hungary's agricultural export subsidies remain in excess of its WTO commitments, the Hungarian Government is phasing out excess subsidies and has undertaken not to use subsidies to penetrate new export markets (under an October 1997 agreement with the U.S. and other petitioning members of the WTO).

LACK OF INTELLECTUAL PROPERTY PROTECTION

Hungary's intellectual property rights (IPR) laws are adequate in many respects, but significant gaps remain and prosecutorial enforcement needs to be strengthened substantially. Piracy of audiovisual works and computer programs has decreased, but remain extensive. Copyright legislation also needs to provide for retroactive protection of U.S. works, civil *ex parte* search provisions, and refined pipeline protection for patents.

Patent Protection

Hungarian patent protection was strengthened following the conclusion of a comprehensive U.S.-Hungary bilateral agreement on IPR protection in 1993. Under this agreement, Hungary agreed to protect pharmaceutical products, unlike the previous law in which patents were limited to processes for producing pharmaceuticals. The bilateral IPR agreement provides transitional pipeline protection for U.S. pharmaceutical products otherwise ineligible for new product patents in Hungary, patent rights application regardless of whether products are imported or locally produced, and limitations on the use of compulsory licenses. Implementation of this legislation began on July 1, 1994.

There are, however, limitations to Hungary's Pipeline Protection Law that make pipeline protection inadequate under certain circumstances. For example, no pipeline protection can be obtained for products where a corresponding foreign counterpart patent is issued after the effective date of Hungary's Pipeline Law (i.e., after July 1, 1994). The Pipeline Protection Law also entails the uncertainty that a Hungarian company, once an invention is published, may have started work to develop a corresponding product before the innovator can file their pipeline application. Under such circumstances, it appears that a patent holder could then not enforce the pipeline patent. There is also a problem with Article 20 of the new law, in addition to the incorrect application of the "modification of priority" concept.

Persistent problems in the Hungarian judicial system continue to hinder protection of patent rights. In 1997, the Hungarian Government strengthened access to legal injunctions and attempted to reduce the backlog of court cases. However, this action did not affect ongoing IPR disputes, including a long-standing patent infringement suit by a large U.S. pharmaceutical firm. U.S. interests have not been able to obtain injunctive relief prohibiting the marketing of products that the courts have deemed infringing. The lack of relevant technical expertise in the courts can result in patent infringement cases taking three or more years to reach conclusion. Penalties awarded in such cases are considered too low to act as effective deterrents.

Copyright Protection

Hungarian copyright laws largely conform to international standards, but certain legislative steps still need to be taken before they meets bilateral IPR and TRIPs commitments. The 1993 bilateral IPR agreement recognizes an exclusive right to authorize the public communication of work, including to perform, project, exhibit, broadcast, transmit, retransmit or display. The agreement also requires that protected rights be freely and separately exploitable and conferrable (contract rights), as well as recognizing an exclusive right to authorize the first public distribution including importation for protected works. To meet its TRIPs obligations, Hungary still needs to provide full retroactivity for sound recordings and civil *ex parte* search provisions. Encrypted signals must also be protected by prohibiting unauthorized retransmission of signals, the manufacture, distribution, possession, sale, rental and use of unauthorized descrambling devices. In early 1999, the Hungarian Government appeared likely to approve a new copyright law which would address several of these gaps.

In May 1993, Hungary added stiff penalties for copyright infringement to its penal code. Since then, piracy of audiovisual works and transmissions has been driven underground and remains high. Overall, prosecutions of audiovisual piracy are steady at about 200 per year. In December 1998, the courts issued a landmark verdict against a pre-release video piracy ring, sentencing 11 persons to a combined 16 years of imprisonment.

Nonetheless, fines remain too low even for a middle-income country (total fines assessed in 1997 were HUF 1.5 million, or approx. $8200). The U.S. motion picture industry estimates that 55-0 percent of videotapes circulating in 1998 were pirated (down from 85 percent in 1993). Of the roughly 1200 cable broadcasting systems in Hungary, 30 percent regularly make unauthorized transmissions of videos, and retransmission of descrambled cable and satellite signals. The total annual loss from audiovisual piracy in 1998 is estimated at $19 million.

Under current law, employers are prevented from exercising all economic rights with respect to software created by employees. This law deters foreign and local investment in software development and publishing.

SERVICES BARRIERS

Public television is required to fill 70 percent of its air time with European production and 51 percent of which must be Hungarian, excluding advertising, news, sports, game and quiz shows. Hungarian film quotas in the 15 to 20 percent range apply to public television. These quotas are not seen as cutting actual U.S. market share. For private broadcasters, the 1995 Media Law reserves 10 percent of program time for Hungarian programs, excluding films (increasing to 15 percent after January 1, 1999). In selling licenses for two private national television frequencies in 1997, the National Radio and Television Board (ORTT) mandated a European quota of 50 percent of total annual program time, excluding ads, news, sports, and game shows (Hungarian content quotas apply as well). However, U.S. feature films and television productions retain a strong presence, especially in prime time.

Sales of U.S. air and ground services in Hungary are limited, since the U.S. and Hungary do not have a bilateral "Open Skies" civil aviation agreement.

Legal Services

Hungary introduced new restrictions on foreign lawyers and law firms under legislation passed in 1998, which requires *inter alia* that foreign legal practitioners associate with a Hungarian firm or lawyer. The law's provisions are compounded by new restrictions proposed by the Hungarian Bar and by difficulties in securing tax identification. Some U.S. law firms in Hungary believe the restrictions could significantly reduce market access for U.S. legal services.

A person cannot provide foreign legal consultancy services nor legal advice on foreign or international law without being licensed in the practice of Hungarian law. Foreigners in legal firms can establish themselves; however all employees must be Hungarian.

Architecture and Engineering Services

Only Hungarian nationals may be licensed as architects and engineers.

Accounting Services

Audits must be conducted by Hungarian-certified accountants. Such individuals may work for foreign firms.

INVESTMENT BARRIERS

Hungary's commitment to cash privatization of large state enterprises has made it a leading recipient of foreign direct investment, especially U.S. investment, in Central and Eastern Europe. Hungarian Governments have progressively reduced state ownership in "strategic" enterprises from 50 percent to 25 percent to a single golden share with veto rights.

Government delays in approving energy price increases have repeatedly prevented U.S. and other foreign firms from realizing the eight-percent returns guaranteed in energy privatization contracts. In December 1998, the Hungarian Government announced price increases effective January 1999, but the issue will remain unresolved until foreign investors and the government agree on a new regulatory framework and pricing mechanisms for the energy sector.

Since 1994, Hungary has offered targeted tax incentives for investment (replacing blanket incentives) based on export promotion, reinvestment of profits, and job creation in areas of high unemployment. More recent tax incentives target investment to depressed areas of the country, chiefly the northeastern Hajdu-Bihar, Nograd, Borsod-Abauj-Zemplen and Szabolcs-Szatmar-Bereg regions. In 1998, the government implemented a 10-year corporate tax break to companies investing at least HUF 10 billion, creating 500 or more jobs. If the investment takes place in an economically distressed region, the minimum investment is HUF 3 billion.

A customs law, passed in late 1995, eliminated duty-free importation of capital goods by foreign-owned companies. The law, intended to place domestic enterprises on an equal footing with foreign-owned competitors, eliminated a prior incentive to invest in Hungary.

ANTICOMPETITIVE PRACTICES

Privatization and entry into the Hungarian market for most multinationals has greatly increased competition in most sectors. However, some key infrastructural monopolies (broadcast transmitter Antenna Hungaria, electricity wholesaler MVM, state railways MAV, and two-thirds of Malev airlines) remain state-owned and receive special consideration from the Hungarian Government. In the telecommunications sector, the awarding of monopoly phone concessions (including to U.S.-owned firms) during privatization has delayed the introduction of full competition until December 31, 2003. Hungary has committed as part of the WTO Basic Telecom Services Agreement to allow unlimited competition in the telecom sector starting on that date.

ELECTRONIC COMMERCE

Sales via the Internet are unrestricted, but subject to taxation. Internet purchases of physical goods are subject to customs duties and value-added tax (VAT) if delivered from abroad or from within Hungary. The Customs Office assesses and collects VAT on software imported on physical media and/or installed on hardware. No customs duty payment is required in case of buying software purchased and delivered via the Internet, however, VAT should be paid after the purchase (on a self-assessment basis).

OTHER BARRIERS

Although bribery is seldom seen to penetrate the highest levels of the Hungarian state, transparency remains an issue in business dealings. Some U.S. firms complain of inappropriate influences in government tenders.

The U.S. distilled spirits industry believes Hungary's excise taxes discriminate against imported whiskey, vodka, rum and liqueurs in favor of domestically produced fruit brandies and eaux de vie, in violation of GATT Article III, paragraph 2.

Many firms operating in Hungary are caught unaware by shifts in government policy due to insufficient government consultation with business interests. In other cases, the exceptional autonomy of the judicial system and of the National Radio and Television Board (both products of Hungary's transition to democracy) sometimes leads to decisions inconsistent with an overall government policy of promoting economic openness. In addition, complaints have been registered with the U.S. Government concerning inconsistent implementation of customs regulations and procedures when exporting to Hungary.

INDIA

In 1998, the U.S. trade deficit with India was $4.7 billion, an increase of $975 million from the U.S. trade deficit of $3.7 billion in 1997. U.S. merchandise exports to India were $3.6 billion, an increase of $71 million (2.0 percent) from the level of U.S. exports to India in 1997. India was the United States' 33rd largest export market in 1998. U.S. imports from India were $8.2 billion in 1998, an increase of $904 million (12.3 percent) from the level of imports in 1997. The stock of U.S. foreign direct investment (FDI) in India in 1997 was $1.7 billion, an increase of 24.5 percent from the level of U.S. FDI in 1995. U.S. FDI in India is concentrated largely in the banking, manufacturing and financial service sectors, but a substantial portion of new investment approvals are in infrastructure sectors.

IMPORT POLICIES

In June 1991, the then newly-elected government recognized that India's budget deficit, balance of payments problems, and structural imbalances would require re-evaluation of past economic policies and structural adjustment assistance from international financial institutions. As part of economic reform, the Indian Government has taken steps towards a more open and transparent trade regime, leading to a significant increase in Indo-U.S. trade and investment. With substantial additional liberalization, U.S.-India trade could become quite significant.

India's import licensing restrictions on approximately one-quarter of its imports and high tariffs remain serious impediments to U.S. exports, especially agricultural and consumer items. The United States continues to raise and discuss India's restrictive trade practices in all trade-related meetings with Indian officials, in dispute settlement proceeding of the World Trade Organization (WTO), and in regular bilateral consultations.

Tariffs

The Indian Government maintains a ceiling tariff rate (with a few exceptions) of 40 percent. Since the 1998/99 budget, a special additional duty of 4 percent was imposed on all imports except for imports by exporters and trading houses. Extra duties of 2 percent and 3 percent imposed since 1997 were removed in February 1999 in the 1999/2000 budget. However, under the 99/00 budget, customs duty rates of 10percent, 20 percent, and 30 percent were replaced by higher rates of 5 percent, 15 percent, 25 percent, and 35 percent, respectively, unbound zero-rated goods now face a 5 percent tariff and most items were assessed an additional 10 percent surcharge on the basic customs duty. Thus, for example, a 5 percent duty would be assessed at 5.5 percent, and a 35 percent duty would be assessed at 38.5 percent.

In the recent past, India has selectively lowered tariffs on some capital goods and semi-manufactured inputs to help Indian manufacturers**.** They have steadily reduced the import weighted tariff from 87 percent to the 1997/98 level of 23 percent. This does not include the additional 4 percent duty assessed in June 1998. For the first time since the start of economic liberalization in 1991, the Government of India's budget of 1998/99 failed to reduce the maximum and imported weighted average of tariffs. Despite reforms, Indian tariffs are still among the highest in the world, especially for goods that can be produced domestically. Most agricultural products face trade barriers which severely restrict or, in the case of processed foods, prohibit their import. Many consumer goods are similarly restricted.

India maintains a variety of additional charges on imports, allegedly the equivalent of domestic taxes on local goods (the so-called countervailing duties), further raising the cost of imports as they enter the stream of domestic commerce. For example, the increased cost of imported soda ash is estimated to be 66 percent, including a basic tariff rate of 30 percent with additional countervailing duties, special customs duty, and special additional duty. Industry reports that countervailing duties and infrastructure taxes for sugar, gum, and chocolate confectionary range from 59-70 percent. High effective rates also affect chocolate and confectionery products (78 percent). raisins (140 percent); mayonnaise (63 percent), and peanut butter (40 percent); appliances (30-78 percent); and toys and sporting goods (35 percent). Exorbitant effective rates of 253 percent are assessed on distilled spirits imports and 110 percent on still and sparkling wines, plus additional duties of $0.25 per liter for wines. U.S. producers also allege that the 40 percent excise tax on carbonated soft drinks represents a de facto discriminatory government policy because the carbonated soft drink market is supplied predominantly by foreign invested producers.

Progress made thus far in tariff reduction has helped U.S. producers, but further reductions of basic tariff rates and elimination of additional duties would benefit a wide range of U.S. exports. For example, the tariff on almonds is calculated at 55 rupees per kilogram for in shell almonds. The market potential, were the tariff removed, is estimated at up to $100 million by 2005. The United States has asked for a change to a specific (per kilogram) duty on pistachios, where under invoicing by competing suppliers creates unfair competition and limits U.S. market access. Other industries that might benefit from reduced tariff rates include (actual, pre FY99/00 budget, basic tariff rates in parenthesis) fertilizers (0-30 percent); wood products (0-30 percent); agricultural chemicals (35 percent); jewelry (40 percent); precious metal findings (65 percent); soda ash (30 percent); camera components (25 percent tariff, additional countervailing duty of 15 percent and extra duty of 9 percent); instant print film (10 percent); paper and paper board (30 percent); paper and paper board (generally 40%); ferrous waste and scrap (30 percent); computers, office machinery, and spares (0-40 percent); motorcycles, completely built up (CBU) motor vehicles, completely knocked down (CKD) and semi-knocked down (SKD) motor vehicle kits, and automotive parts and components (40 percent); large motorcycles (75 percent); air conditioners and refrigeration equipment (40 percent); heavy equipment spares (20-40 percent); medical equipment components (20 percent); copper waste and scrap (30 percent); hand tools (25 percent); soft drinks (40 percent); cling peaches (40 percent); canned peaches and fruit cocktails (40 percent); citrus fruits (42 percent); sweet cherries (40 percent); vegetable juice (40 percent); processed potato products (40 percent); almonds (55 rs/kg for in shell, 100 rs/kg for shelled); still and sparkling wines (100 percent); distilled spirits (275 percent); carbonated soft drinks (40 percent); corn oil (30 percent); peanut butter (53 percent); pistachios (45 percent); salad dressing (40 percent) and canned soup (40 percent).

In the Uruguay Round, India undertook a two-tiered offer on industrial products, binding tariffs on items in excess of 40 percent at a rate of 40 percent and binding items with tariffs below 40 percent at 25 percent. Some industrial goods (e.g., automobiles) and all consumer products were excluded from India's offer. As a consequence, India's scope of bindings on industrial goods will increase substantially, from 12 percent of imports to 68 percent once all reductions are implemented . The majority of these bindings exceed current Indian applied rates of duty. In agriculture, Uruguay Round tariff bindings are higher than actual rates in important sectors, ranging from 100 to 300 percent.

As a result of Uruguay Round commitments under the Agreement on Textiles and Clothing, India and the United States concluded successful bilateral textile negotiations, giving the United States significant tariff reductions on all categories of textile products. India committed to reduce and bind its tariffs over a period of seven years, with some of these reductions to have been implemented no later than the entry into force of the WTO. By January 1, 2000, Indian tariffs are to be reduced to levels no higher than 20 percent for fibers and yarns, 25 percent for industrial fabrics, 35 percent for home furnishings; and 35 to 40 percent for apparel. These reduced tariffs are to be applied on a most-favored-nation (MFN) basis. Current tariffs plus additional duties result in effective protection for most textile and apparel products of 50-88.5 percent, which is above current WTO bindings.

Import Licensing

In addition to high tariff rates, U.S. industries must deal with India's import licensing regime. The regime has been liberalized, but still limits market access for U.S. goods which would be competitive in a more open trading environment. Importation of "consumer goods" is virtually banned with a few exceptions such as for some imports under special import licenses (SIL), which are import permits that carry export performance requirements and are traded in the market for a variable premium.. Consumer goods are defined very broadly as goods that can directly satisfy human needs without further processing. As a result, products of agricultural or animal origin must be licensed and are therefore, with few exceptions, effectively banned. Since India maintains a restrictive licensing regime wherein no licenses are granted, the system acts as a virtual ban on imports that are licensed in this fashion. U.S. industry reports that products that are granted SILs, like frozen french fries, face restrictive development activities or limited market penetration. Importers of theatrical films must obtain a certificate from the Central Board of Film Certification, stating that the film is suitable for import according to guidelines laid down by the government. U.S. industry maintains that this constitutes a pre-censorship "quality check" obstacle. In addition, the Indian Government imposes a requirement to pay a fee for certification. A special import license is required for vehicle knock-down kit imports after a manufacturer signs a Memorandum of Understanding (MOU) with the Director General of Foreign Trade, covering plans on investment, capacity, local content, value of CKD imports and export earnings. Some commodity imports must be channeled (“canalized”) through public sector companies, although many “canalized” items have been fully or partially decontrolled recently. Currently, the main “canalized” items are petroleum products, bulk agricultural products (such as grains), and certain pharmaceutical products.

India's import policy is administered by means of a negative list. The negative list is divided into three categories: (1) banned or prohibited items (tallow, fat, and oils of animal origin); (2) restricted items which require an import license, including all consumer goods (as defined in the "tariffs" section above), such as instant print cameras, distilled spirits, canned soup, canned peaches and fruit cocktails, vegetable juice, seeds, potatoes and processed potato products, distilled spirits, plants, animals, insecticides, pesticides, electronic items and components, chemicals and pharmaceuticals, and a wide variety of other items; and (3) “canalized” items importable only by government trading monopolies (bulk agricultural commodities) and subject to cabinet approval regarding timing and quantity.

India’s restriction on access for most consumer products (via the non-automatic licensing scheme) has increased concern for U.S. industries. According to company representatives, India’s high tariffs and exclusive licensing system have undercut potential sales of goods. Examples of U.S. goods (estimated annual sales potential in parenthesis) affected by India’s restrictive barriers are the following: fruit cocktails and canned peaches (between $500,000 to $2 million); grapefruits (less than $5 million); table grapes ($5-$10 million); sweet cherries (less than $5 million); large motorcycles ($5 million); still and sparkling wines ($5 million); potato products (less than $5 million), and distilled spirits ($41,000).

In October 1995, the Indian Government published for the first time a correlation between its negative list of import restrictions and India's harmonized tariff schedule (HTS) import classification scheme. This document, entitled "Export and Import Policy Aligned on an ITC (HS) Classification" was intended to instill a degree of transparency, consistency, and clarity to the importation of goods into India.

India has liberalized many restrictions on the importation of capital goods. The importation of all second-hand capital goods by actual users is permitted without license, provided the goods have a residual life of five years. In March 1993, India abolished the two-tiered exchange rate regime, moving to a single market-determined exchange rate for trade transactions and inward remittances. The rupee is convertible on current account transactions, with indicative limits remaining on foreign exchange for travel and tourism. Capital account transactions for foreign investors, both portfolio and direct, are fully convertible. However, Indian firms and individuals remain subject to capital account restrictions.

India has committed to remove many apparel, fabric, and yarn imports from the restricted licensing list as a result of the United States - India Market Access Agreement for Textiles and Clothing of January 1, 1995. India agreed to provide immediate "unrestricted" access for fibers, yarns, and industrial fabrics. Similar "unrestricted" access for apparel fabrics, home furnishings, and clothing will be provided as soon as India lifts its import licensing previously justified under GATT Article XVIII:B, or no later than January 1, 2000, for home furnishings and apparel fabrics; and January 1, 2002, for most apparel and other made-up textile items. Removal of these licensing restrictions will be on a most-favored-nation (MFN) basis.

Balance of Payments Justification for Restrictive Import Licensing

India has claimed that its quantitative restrictions (QRS) on approximately 25 percent of its tariff lines are justified on balance of payments (BOP) grounds under GATT 1994 article XVIII:B. India has invoked these justifications for over fifty years. These represent significant barriers to doing business in India and removal of balance of payments restrictions would represent a significant liberalization of the Indian economy, affecting a wide range of U.S. industries. Information about the strength of India's currency reserve position presented at the WTO Balance of Payments Committee meeting with India in June 1997 laid the foundation for India's removal of quantitative restrictions on over 2,700 consumer and agricultural products justified under GATT article XVIII:B. However, in light of India's reserve situation, a six year phase out plan presented by India in October 1997 was unacceptable to the United States. Thus, at the request of the U.S., a WTO dispute settlement panel was established in November 1997 to resolve the issue. The panel's final report is expected to be publicly available in late March, 1999. The United States continues to assert that these Indian restrictions are clearly WTO-inconsistent and not justifiable on balance of payments grounds. In April 1999 India reduced by over 300 the number of products subject to quantitative restrictions.

Customs Procedures

In December 1998, the Government of India fixed a minimum import price for certain imported steel products. According to press reports, these prices were fixed for imported hot-rolled steel coils, cold rolled steel coils, hot-rolled sheets, tin-plates, electrical sheets, and alloy steel bars and rods. Under the India minimum reference price valuation regime, importations of, for example, hot-rolled steel coils is allowed only if the minimum c.i.f. customs value is $302 per ton. The U.S. Government is reviewing this action with regard to its consistency with India's obligations under the WTO Agreement on Customs Valuation.

The opening of India's trade regime has reduced tariff levels but it has not eased some of the worst aspects of customs procedures. Documentation requirements, including ex-factory bills of sale, are extensive and delays frequent. There have also been private sector reports of misclassification and incorrect valuation of goods for the purposes of duty assessment, in addition to corruption. The Indian Customs Service would also benefit from a significant streamlining of its procedures for moving products from the border into the stream of domestic commerce.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Indian standards generally follow international norms and do not constitute a significant barrier to trade. Requirements established under India's food safety laws are often outdated or more stringent than international norms, but enforcement has been weak. Opponents of foreign investment have tried to apply these laws selectively to U.S. firms (e.g., KFC), however these attempts have not withstood judicial scrutiny. Where differences exist, India is seeking to harmonize national standards with international norms. No distinctions are made between imported and domestically produced goods, except in the case of some bulk grains. Excessively restrictive plant protection rules have been introduced on soybeans and wheat. A return to more reasonable measures is being discussed by Indian and American agricultural officials.

Sanitary and Phytosanitary (SPS) Restrictions

India applies a range of SPS measures which have not been demonstrated as based on science and therefore, do not conform to international standards or the WTO SPS Agreement. India's SPS requirements are restrictive and lack transparency. For example, many of India's proposed quarantine pests are already present in India, while others do not pose a significant level of risk. These requirements are a major hindrance to U.S. agricultural exports to India, particularly for wheat and soybeans. More specifically, industry reports that there is a dispute with the Indian Government over the presence of *Tilletia controversa* Kuhn (TCK) in bulk export grains and oilseed shipments.

GOVERNMENT PROCUREMENT

Indian Government procurement practices and procedures are neither transparent nor standardized, and discriminate against foreign suppliers, but they are improving under the influence of fiscal stringency. Specific price and quality preferences for local suppliers were largely abolished in June 1992, and recipients of preferential treatment are now supposedly limited to the small-scale industrial and handicrafts sectors, which represent a very small share of total government procurement. Despite the easing of policy requirements to discriminate, local suppliers are favored in most contracts where their prices and quality are acceptable. Reports persist that government-owned companies cash performance bonds of foreign companies even when there has been no dispute over performance.

A second area of discrimination affecting U.S. suppliers is the prohibition of defense procurement through agents. Most U.S. firms do not have enough business in India to justify the high cost of resident representation. Some major government entities routinely use foreign bids to pressure domestic producers to lower their prices, permitting the local bidder to resubmit tenders when a foreign contractor has underbid them. For just one large project (e.g., power projects), this could cost U.S. contractors hundreds of millions of dollars in lost opportunities.

When foreign financing is involved, principal government agencies tend to follow multilateral development bank requirements for international tenders. However, in other purchases, current procurement practices usually result in discrimination against foreign suppliers when goods or services of comparable quality and price are available locally.

EXPORT SUBSIDIES

Export earnings are exempt from income and trade taxes, and exporters may enjoy a variety of tariff incentives and promotional import licensing schemes, some of which carry export requirements. Export promotion measures include duty exemptions or concessional tariffs on raw material and capital inputs, and access to special import licenses for restricted inputs. These subsidies have caused concern for U.S. industries particularly the agrochemical sector. According to industry representatives, since no corporate taxes are levied on income generated from exports by Indian companies, this enables them to price goods below international competitive levels while maintaining a constant profit margin. Commercial banks also provide export financing on concessional items.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Based on past practices, India was identified in April 1991 as a "priority foreign country" under the "Special 301" provision of the 1988 Trade Act, and a Section 301 investigation was initiated on May 26, 1991. In February 1992, following a nine-month investigation under “Special 301,” the USTR determined that India's denial of adequate and effective intellectual property protection was unreasonable and burdens or restricts U.S. commerce, especially in the area of patent protection. India does not have a bilateral patent agreement with the United States.

In April 1992, the President suspended duty-free privileges under the Generalized System of Preferences (GSP) for $60 million in trade from India. This suspension applied principally to pharmaceuticals, chemicals, and related products. Benefits on certain chemicals, added to GSP in June 1992, were withheld from India, increasing the trade for which GSP is suspended to approximately $80 million. Significant revisions to India's copyright law in May 1994 led to the downgrading of India as "priority foreign country" to the “priority watch list,” a designation under which India has remained since 1995.

Patents

India's patent protection is weak and has especially adverse effects on U.S. pharmaceutical and chemical firms. U.S. pharmaceutical multinationals estimate current annual losses in India due to the lack of patent protection for pharmaceutical products at approximately $500 million. India's patent act prohibits patents for any invention intended for use or capable of being used as a food, medicine, or drug, or relating to substances prepared or produced by chemical processes. Many U.S.-invented drugs are widely reproduced in India since product patent protection is not available. U.S. agrochemical industries have joined other industries’ concern with respect to India’s inadequate intellectual property protection. As a result, industries have withheld marketing and production of produce compounds in India. Estimated export sales loss, as a result, range from $5-25 million.

Under existing law, processes for making such substances are patentable, but the patent term for these processes is limited to the shorter of five years from patent grant or seven years from patent application filing. This is usually less than the time needed to obtain regulatory approval to market the product.

Where available, product patents expire 14 years from the date of patent filing. Stringent compulsory licensing provisions have the potential to render patent protection virtually meaningless, and broad "licenses of right" apply automatically to food and drug patents. India also fails to protect biotechnological inventions, methods of agriculture and horticulture, and processes for treatment of humans, animals, or plants. Indian policy guidelines normally limit recurring royalty payments, including patent licensing payments, to 8 percent of the selling price (net of certain taxes and purchases). Royalties and lump sum payments are taxed at a 30 percent rate.

Many of these barriers must be removed as India undertakes its Uruguay Round obligations on Trade- Related Aspects of Intellectual Property Rights (TRIPs). The Indian Government has announced its intention to conform fully to the IPR-related requirements of the Uruguay Round. As a first step, the government promulgated in late 1994 a temporary ordinance and introduced in early 1995 patent legislation consistent with India's TRIPs obligations relating to the "mailbox" provisions. The patents bill failed to pass in the upper house of Parliament in 1995, leaving India in violation of this TRIPs provision since early-1995, when the patent ordinance expired. In November 1996, the WTO Dispute Settlement Body established a panel at the request of the United States to review India's failure to meet these TRIPs obligations. The final panel report on this case was issued in August 1997, and ruled that India had failed to meet its obligations under the TRIPs agreement. Following an appeal by India, the WTO's appellate body ruled in favor of the United States in December 1997.

Patent legislation designed to meet India's TRIPs obligations was introduced and passed in the Upper House of Parliament in December 1998. Indian officials have pledged that the legislation will be passed by the Lower House in the parliamentary session beginning in February, 1999 in advance of the April, 19, 1999 deadline established by the WTO dispute settlement process. Meanwhile, a temporary ordinance bringing the amended patent law into effect was promulgated on January 8, 1999. The United States requested and in February 1999 held consultations with India on the grounds that the new legislation fails to meet TRIPs requirements.

Aside from failing to meet its immediate obligations, the Indian Government has announced its intention to take full advantage of the transition period permitted developing countries under TRIPs before implementing full patent protection. The United States continues to press for passage of the "mail box"-related legislation and to urge more accelerated implementation of the TRIPs patent provisions. A small, but growing, domestic constituency, made up of some Indian pharmaceutical companies, technology firms and educational/research institutions, favors an improved patent regime, including full product patent protection. India's decision in August 1998 to join the Paris Convention and the Patent Cooperation Treaty, which took effect in December, is a sign of improved IPR protection.

Copyrights

Under pressure from its own domestic industry, India implemented a strengthened copyright law in May 1995, placing it on par with international standards for copyright protection. However, piracy of copyrighted materials, (particularly popular fiction works and certain textbooks) , remains a problem for U.S. and Indian producers. Video, record, tape, and software piracy are also widespread, but enforcement has improved. Indian copyright law has undergone a series of changes over the last 10 years to provide stronger remedies against piracy and to protect computer software. In 1994, Parliament passed a comprehensive amendment to the 1957 Copyright Act. India's law now provides: rental rights for video cassettes; protection for works transmitted by satellite, cable, or another means of simultaneous communication; collective administration of rights; and limiting judicial discretion with respect to the level of penalties imposed on copyright pirates. However, there is no statutory presumption of copyright ownership and the defendant's "actual knowledge" of infringement must be proven.

Indian copyright law offers strong protection, but the Indian Constitution gives enforcement responsibility to the state governments. Classification of copyright and trademark infringements as "cognizable offenses" has expanded police search and seizures authority, while the formation of appellate boards has speeded prosecution. The new law also provides for new minimum criminal penalties, including a mandatory minimum jail term, that U.S. industry believes will go far in controlling piracy, if implemented. Other steps to improve copyright enforcement include: the establishment of a copyright enforcement advisory council, including a judiciary commissioner, with responsibility for policy development and coordination; the initiation of a program for training police officers and prosecutors concerned with enforcement of copyright laws; and the compilation of data on copyright offenses on a nationwide basis to assist in enforcement and application of penalties. However, because of backlogs in the court system and documentary and other procedural requirements, few cases have been prosecuted recently. While a significant number of police raids have been planned and executed, the law requires that in order to seize allegedly infringing equipment, the police must witness its use in an infringing act.

Cable piracy continues to be a significant problem, with estimates of tens of thousands of illegal systems in operation in India at this time. Copyrighted U.S. product is transmitted over this medium without authorization, often using pirated video cassettes as source materials. This widespread copyright infringement has a significant detrimental effect on all motion picture market segments -- theatrical, home video and television -- in India. For instance, pirated videos are available in major cities before their local theatrical release. Industry representatives estimate annual losses to the U.S. motion picture industry due to audiovisual piracy in 1998 to be $66 million. A bill to regulate the cable industry was submitted to parliament in 1993, but has been sent back to the Ministry of Information for revision with no further progress in this area since that time. Annual losses by U.S. motion picture industries due to India's import authorization policies and remittance restrictions are estimated to be $5-$10 million.

Trademarks

The Government of India has committed to upgrading its trademark regime, including according national treatment for the use of trademarks owned by foreign proprietors, providing statutory protection of service marks, and clarifying the conditions under which the cancellation of a mark due to non-use is justified. In May 1995, the Government of India introduced in Parliament a trademark bill that passed the lower house. However, opposition in the upper house of Parliament stalled discussion of the legislation, which is still pending. Passage of the trademark bill is expected in 1999.

Protection of foreign marks in India is still difficult, although enforcement is improving. Guidelines for foreign joint ventures have prohibited the use of "foreign" trademarks on goods produced for the domestic market (although several well-known U.S. firms were authorized in October 1991 to use their own brand names). The required registration of a trademark license (described by U.S. industry as highly bureaucratic and time-consuming) has routinely been refused on such grounds as "not in the public interest," "will not promote domestic industry," or for "balance of payments reasons." The Foreign Exchange Regulation Act (FERA) restricts the use of trademarks by foreign firms unless they invest in India or supply technology.

In an infringement suit, trademark owners must prove they have used their mark to avoid a counterclaim for registration cancellation due to non-use. Such proof can be difficult, given India's policy of discouraging foreign trademark use. Companies denied the right to import and sell products in India are often unable to demonstrate use of registered trademarks through local sale. Consequently, trademarks on restricted foreign goods are exposed to the risk of cancellation for non-use.

No protection is available for service marks. Trademarks for several single ingredient drugs cannot be registered. There have been several cases where unauthorized Indian firms have used U.S. trademarks for marketing Indian goods. However, the Indian courts have recently upheld trademark owner rights in infringement cases.

SERVICES BARRIERS

Indian Government entities run many major service industries either partially or entirely. However, both foreign and domestic private firms play a large role in advertising, accounting, car rental, and a wide range of consulting services. There is growing awareness of India's potential as a major services exporter and increasing demand for a more open services market.

U.S. motion pictures industries have expressed concern with the proposed Broadcast bill of January 1997, which would increase limitations on broadcasting. According to industry representatives, the bill contains several protectionist provisions which act to limit foreign interests in local broadcasting including a 20 percent equity cap on foreign investment. The draft bill would establish a regulatory framework for direct -to-home (DTH) services, including satellite and cable television programming, and replace the existing Cable Act of 1995. The bill is currently pending review by the Parliament.

Insurance

All insurance companies are government-owned, except for a number of private sector firms which provide reinsurance brokerage services. Foreign insurance companies have no direct access to the domestic insurance market except for surplus lines, some reinsurance, and some marine cargo insurance. A government-appointed committee recommended in 1994 that the insurance sector be opened up to private sector competition, both domestic and foreign. In December 1996, the Finance Minister introduced the Insurance Regulatory Authority (IRA) bill in Parliament. The bill was withdrawn by the government in August 1997, and was reintroduced in Parliament in December, 1998. The bill has been referred to the Parliamentary Standing Committee on Finance for further discussions. In the WTO Financial Services Negotiations that concluded in December 1997, India bound the limited range of insurance lines currently open to foreign participation. In addition, India committed to most-favored-nation (MFN) status effective January 1999 for all financial services sectors, dropping a previous MFN exemption. U.S. industry believes that while they are excluded from the Indian insurance market, they are losing $5-25 million dollars a year in premium revenue.

Banking

Most Indian banks are government-owned and entry of foreign banks remains highly regulated. The Reserve Bank of India issued in January 1993 guidelines under which new private sector banks may be established. Approval has been granted for operation of 25 new foreign banks or bank branches since June 1993. Foreign bank branches and representative offices are permitted based upon reciprocity and India's estimated or perceived need for financial services. As a result, access for foreign banks has traditionally been quite limited. Five U.S. banks now have a total of 16 branches in India. They operate under restrictive conditions including tight limitations on their ability to add sub-branches. Operating ratios are determined based on the foreign branch's local capital, rather than global capital of the parent institution.

India’s WTO Financial Services offer provides for a greater role for foreign banks starting on January, 1999. Foreign banks would be allowed to open twelve new branches annually (up from the present commitment of 8 per year). In addition, foreign financial services companies, including banks, would be allowed to provide equity venture capital in India, up to 51 percent of a company’s total equity. However, India did not agree to grant national treatment to foreign companies investing in the financial services sector, nor did it make any commitments on cross-border banking.

Securities

Foreign securities firms have established majority-owned joint ventures in India. Through registered brokers, foreign institutional investors (FII), such as foreign pension funds, mutual funds, and investment trusts, are permitted to invest in Indian primary and secondary markets. However, FII holdings of issued capital in individual firms are limited; total aggregate holdings by FIIs cannot exceed 24 percent of issued capital (the limit can be raised to 30 percent with the approval of the Board of Directors of the company concerned), and holdings by a single FII are limited to 10 percent of issued capital. Foreign securities firms may now purchase seats on major Indian stock exchanges, subject to the approval of a regulatory authority. In the 1998/99 Budget, FII investments were allowed for the first time in the debt securities of unlisted Indian companies. Prior clearance from the Reserve Bank of India is no longer required for Indian companies for inward remittance of foreign exchange and for the issuance of shares to foreign investors.

Motion Pictures

In the past, restrictions imposed on the motion picture industry were quite burdensome, costing an estimated $80-300 million according to industry estimates. The United States pressed for removal of these restrictions, and received commitments from the Government of India in February 1992 that addressed most industry concerns. Beginning in August 1992, the Indian Government began implementation of its commitments, introducing a number of significant changes in film import policy. The Government of India has carried out its commitments in good faith.

However, some issues of concern remain. For example, the pre-censorship "quality check" procedures entail fees, and some Indian states apply high entertainment taxes, amounting to 100 percent of the price of admittance in certain cases. High taxes not only constitute a significant disincentive to much needed construction of cinemas and theaters in India, but impede free and open trade. U.S. industry emphasizes that the pre-censorship certification is in itself a form of censorship. U.S. companies have also experienced difficulty in importing film/video publicity materials. More significant, however, are concerns regarding the $6 million annual ceiling applied to remittances by all foreign film producers for balance-of-payments reasons. In addition, India has continued to use a 1956 cabinet resolution to bar any foreign ownership of the media, preventing the approval even of joint ventures. U.S. industry reports that the Ministry of information is working on broadcast policies which continues the restrictions of the 1956 Cable Act. An example of these proposed policies is the limitation on foreign equity to 20 percent in the broadcast industry. Industry further alleges that Indian states continue to apply high entertainment taxes to box office admissions, some amounting ti more than 100 percent of the admission price.

Accounting

Only graduates of an Indian university can qualify as professional accountants in India. Foreign accounting firms can practice in India, if their home countries provide reciprocity to Indian firms. Internationally recognized firm names may not be used, unless they are comprised of the names of proprietors or partners, or a name already in use in India. This limitation applies to all but the two U.S. accounting firms that were established prior to the imposition of this rule. Effective July 1, 1998, the Institute of Chartered Accountants of India (ICAI) banned the use of logos of accounting firms. Financial auditing services may only be provided by firms established as a partnership. However, foreign accountants may not be equity partners.

Construction, Architecture and Engineering

Many construction projects are offered only on a non-convertible rupee payment basis. Only projects financed by international development agencies permit payments in foreign currency. Foreign construction firms are not awarded government contracts unless local firms are unable to perform the work. Foreign firms may only participate through joint ventures with Indian firms.

Legal Services

Foreign lawyers are not allowed to practice law in India's courts. To qualify to practice in India, a candidate must obtain a law degree from an Indian university. Moreover, India applies a reciprocity requirement in allowing foreign lawyers to practice in its courts to be enrolled as advocates in India. The Indian Bar Council has imposed restrictions on the activities of foreign law firms in recent years that have sharply curtailed U.S. participation in the Indian legal services market.

Telecommunications

India has taken partial steps toward introducing private investment and competition in the supply of basic telecommunications services. However, licensing delays, based in part on uncertainties regarding fees and interconnection charges new entrants must pay, caps on the number of licenses per bidder, alleged irregularities in the tendering process, India's weak multilateral commitments in basic telecom, and the strong influence the government-owned service provider has heretofore exerted over telecom policy have limited the value of the liberalizing steps taken so far.

The national telecommunications policy announced in 1994 allows private participation in the provision of cellular as well as basic and value-added telephone services. Foreign equity in value-added services is limited to 51 percent. For cellular and basic services, the limit is 49 percent. However, as it has been difficult to raise the amounts of money need to finance the new networks, creative financing arrangements have been allowed in some cases that exceed the formal limit. Private operators can provide services within regional "circles" that roughly correspond to India's states. These operators currently are not permitted to offer domestic long distance or international services significantly restricting the market their networks could serve. The policy limits changes in partners for existing joint ventures, reducing the value of existing foreign investment. Delays in awarding and issuing licenses for both cellular and basic service, as well as the imposition of new rules, limits and restrictions, particularly for basic services, have slowed progress and created an environment that is likely to inhibit rapid growth in India's telecommunications infrastructure. Local production requirements remain an important factor in negotiations to establish service operations.

The government established an independent regulatory authority, the Telecom Regulatory Authority of India (TRAI), to oversee the implementation of the telecom policy in 1997. The powers of the TRAI have been drastically curbed in recent months as the Department of Telecommunication continues to display its reluctance to accept the authority of the TRAI. U.S. industry reports that over the past year TRAI has encountered several defeats in India's court system. A new telecom policy is scheduled to be released in March, 1999.

In the WTO Agreement on basic telecommunications services, India made commitments that did not address the progressive liberalization of its market but generally reflected the status quo. It adopted some pro-competitive regulatory principles, but did not set a date certain to open up additional segments of its telecom services market on an unrestricted basis. India's WTO schedule does not guarantee resale and takes a step back by committing only to a 25 percent foreign investment stake in basic telecom. India did not make any market access commitments regarding satellite services. India mandated the GSM standard for cellular services and took an MFN exemption for accounting rates. India's government-owned corporations, MTNL and VSNL, are the monopoly providers of domestic long distance and international service respectively. India has stated that it will review its policy on domestic long distance in 1999 and international long distance in 2004. U.S. industry does report that there have been improvements in India's market over the past year. For example, India created the National Task Force on Information Technology and Software Development. Appointed last year, the Task Force has drafted India's National Informatics Policy, which was responsible for the collapse of the Internet Service Provider (ISP) monopoly, previously held by Vinesh Sanchar Nigasm Limited (VSNL). On November 7, 1998, competitors to VSNL were granted license to operate ISPs. Competition in this market will generate lower prices for consumers and increased opportunity for U.S. equipment suppliers. In addition, India is offering special tax incentives for information technology industries, like software development and more favorable depreciation rates for IT equipment, which indicate India is taking the importance of its high-tech industries more seriously.

Access to India's market for Global Mobile Personal Communications Systems (GMPCS) services will be determined by the policy the Government of India develops on treatment and licensing of GMPCS systems. These satellite-delivered services will allow subscribers to communicate with callers anywhere in the world using a cellular-like phone, and will serve an important role in providing telecommunications services in infrastructure-poor rural areas. The policy will determine how many GMPCS providers will be able to offer these services in India. The U.S. Government is encouraging India to adopt a competitive approach and license all GMPCS providers interested in serving India. A variety of providers in the market will encourage competition and lower prices.

India has recently been working on legislation that would regulate aspects of the broadcasting industry. The draft broadcasting bill is intended to regulate all television and radio delivery services: terrestrial broadcast television, cable services, and satellite (including direct-to-home, or DTH) services. A recent version of the bill would restrict foreign equity investment to 20 percent, require local incorporation, require local uplink of satellite signals, and require local licensing of programs and channels. The bill is also likely to contain cross-media ownership restrictions, spectrum auctions, and program standards. As such, the bill will have a negative impact on the commercial development of India's satellite and cable industries and the ability of foreign companies to access the Indian market, both for delivery of communications services and for program access.

INVESTMENT BARRIERS

The new industrial policy announced in July 1991 marked a major shift, relaxing or eliminating many restrictions on investment and simplifying the investment approval process. However, many of these changes were instituted by executive orders and have not yet received legislative sanction through parliament. The United States and India still have not negotiated a bilateral investment treaty, although an updated agreement, covering operations of the Overseas Private Investment Corporation (OPIC), was signed in November 1997. The new agreement modernizes and replaces the arrangements that had governed OPIC operations since 1957. OPIC operations resumed in November 1998 following the temporary, partial lifting of sanctions imposed on India after its nuclear tests in May 1998.

Equity Restrictions

The complicated and burdensome Foreign Exchange Regulation Act has been amended to increase access for foreign investment in India. Automatic approval is granted by the Reserve Bank of India for equity investments of up to 51 percent in 35 industries. The Indian Government has also authorized existing foreign companies to increase equity holdings to 51 percent. In December 1996, the government announced that it would allow automatic approval by the Reserve Bank of India of equity investments of up to 74 percent in nine categories including mining services, electricity generation and transmission, and construction of roads, bridges, ports, harbors, and runways. All sectors of the Indian economy are now open to foreign investment, except those with security concerns, such as defense, railways, and atomic energy. Government approval is still necessary for majority foreign participation in the passenger car sector. Proposals for foreign equity participation exceeding 51 percent (74% in the case of nine industries) and projects considered to be "politically sensitive" are considered by the Foreign Investment Promotion Board (FIPB). Through 1994, the FIPB had approved almost all the requests made for higher foreign ownership and for other "exceptional" cases, but still reserved the right to deny requests for increased equity stakes. However, foreign firms report that increases in foreign equity, especially to 100 percent foreign ownership, have become more difficult to obtain since 1994.

Industries have expressed concern with the Indian Government's stringent and non-transparent regulations and procedures governing local share-holding. Current price control regulations have undermined incentives to increase equity holdings in India. Some companies report forced renegotiation of contracts in the power sector to accommodate government changes at the state and central levels. They report that this practice makes India an expensive, complicated, and frustrating environment in which to do business.

On November 25, India's Cabinet Committee on Economic Affairs (CCEA) approved and announced specific new rules applicable to all existing and new foreign auto investments in India. Under the new policy, new and existing joint venture companies seeking to import CKD and SKD kits and automotive components must sign a standardized memorandum of understanding (MOU) with the Government of India containing requirements regarding: $50 million minimum equity investment in joint ventures with majority foreign ownership; local content requirement including waiver of import license requirement when local content exceeds a certain threshold; export obligations; and foreign exchange balancing. Prior to this policy, auto manufacturing investors were required to conclude MOUs on a case-by-case basis. Concern has been expressed that the new policy may be violative of India's WTO Trade-Related Investment Measure (TRIMs) Agreement commitments in regard to both national treatment and the general elimination of quantitative restrictions as described in the illustrative list in the annex to the WTO TRIMs Agreement.

India has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content and "dividend balancing"requirements affecting pharmaceutical products and the economy in general. Proper notification allows developing-country WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. India therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

Trade Restrictions

Though not an investment barrier per se, India's import restrictions and high tariffs have constrained investors from importing competitive inputs.

ANTICOMPETITIVE PRACTICES

As in any country, private and public firms will engage in a variety of anticompetitive practices to the extent they perceive their practices are in their interest and to the extent they can get away with them. One can find examples of both state-owned and private Indian firms engaging in most types of anticompetitive practices with little or no fear of reaction from government overseers or action from a clogged court system. India suffers from a slow bureaucracy and regulatory bodies that reportedly apply monopoly and fair trade regulations selectively.

These practices are not viewed as major hindrances to the sale of U.S. products and services at this time. U.S. firms are more concerned with addressing such basic issues as market access, corruption, arbitrary or capricious behavior on the part of their partners or government agencies, and procurement discrimination from both public and private institutions.

ELECTRONIC COMMERCE

The Indian Government is currently developing a policy regarding electronic commerce. In order to develop electronic commerce, India will have to change the Indian Telegraphic Act of 1885 which does not allow encrypted information to be transmitted over telephone lines. In addition to amending this act, India also plans to make amendments to the Copyright Act of 1957 in order to make circumvention of technological measures like encryption an offense.

In November 1998, internet services were opened up to the private sector for the first time. Private operators can now set up gateways for international connectivity. Foreign equity of up to 49 percent is permitted, and there is no limit on the number of licenses to be issued in a given area.

OTHER BARRIERS

India has an unpublished policy that favors counter trade. The Indian Minerals and Metals Trading Corporation is the major counter trade body, although the State Trading Corporation also handles a small amount of counter trade. Private companies are encouraged to use counter trade. Global tenders usually include a clause stating that, all other factors being equal, preference will be given to companies willing to agree to counter trade. The exact nature of offsetting exports is unspecified as is the export destination. However, the Indian Government does try to eliminate the use of re-exports in counter trade.

India's Drug Policy is an issue of concern for U.S. industries. The policy imposes a stringent price control regime which adversely affects U.S. companies from a commercial standpoint. There is no system allowing for automatic adjustment of prices to offset cost fluctuations. With the lack of effective intellectual property protection coupled with a rigid pricing system, U.S. industries face extreme obstacles to maintain viable businesses in India. Industries most significantly affected are pharmaceutical companies placing the best and latest innovative drugs out on the Indian market. Industry representatives have expressed interest in the Government of India proceeding to the adoption of free pricing measures.

INDONESIA

In 1998, the U.S. trade deficit with Indonesia was approximately $7.0 billion, an increase of $2.4 billion from the U.S. trade deficit of $4.7 billion in 1997. U.S. merchandise exports to Indonesia were approximately $2.3 billion, a decrease of $2.2 billion (49.5 percent) from the level of U.S. exports to Indonesia in 1997. Indonesia was the United States' 40th largest export market in 1998. U.S. imports from Indonesia were $9.3 billion in 1998, an increase of $147 million (1.6 percent) from the level of imports in 1997. The stock of U.S. foreign direct investment (FDI) in Indonesia in 1997 was about $7.4 billion, a decrease of 1.7 percent from the level of U.S. FDI in 1995. U.S. FDI in Indonesia is concentrated largely in the petroleum, manufacturing and financial sectors.

Overview

Indonesia continued to endure in 1998 a period of economic turmoil that commenced in July 1997 as Asian currencies, including the rupiah, began to depreciate. In response to deteriorating macroeconomic conditions, the Government of Indonesia (GOI) has been working with the International Monetary Fund (IMF) on an economic reform program since October 1997. This stabilization package has been modified several times, most significantly in January 1998 and again in June 1998 following the resignation of President Soeharto. The latter versions of the program expanded the focus of earlier programs to cover the entire range of economic challenges facing Indonesia. These include fiscal policy, monetary policy, structural reform and deregulation, corporate debt and bankruptcy proceedings, banking sector reform and restructuring, restoration of trade financing to promote exports, food security, the distribution system and social safety net policies. The program provides for unprecedented and accelerated structural reforms in virtually every sector of the economy and major changes in the trade regime.

Despite the sharp economic downturn in Indonesia, the Indonesian Government has undertaken structural reforms to dismantle the national car and aircraft programs, reduce tariffs on agricultural commodities and industrial goods, eliminate export taxes, and disband marketing monopolies. Indonesia appears to be implementing its border liberalization and internal market reforms captured in the IMF memoranda from October 1997 to date, although careful monitoring is warranted given the ambitious scope of liberalization involved and the relatively low level of commercial activity in 1998. Although implementation has been slow in several areas and serious problems remain with the banking system and outstanding corporate debt, the changes being implemented are substantial improvements in the operating environment for businesses in Indonesia.

The major, recently articulated concerns of U.S. industry include: high tariffs and taxes; unpredictable issuance of regulations and licenses; issuance of new regulations without implementation procedures, causing arbitrary interpretations; lack of intellectual property protection; widespread corruption; a court system unable to enforce legal contracts; an underdeveloped legal system that makes negotiation of credit facility documents difficult; laws that only provide for guarantees and not security interest; non-existent credit reporting; and underdeveloped capital markets.

IMPORT POLICIES

In recent years, Indonesia has liberalized its trade regime and taken a number of important steps to reduce protection. The Indonesian Government did so by issuing periodic deregulation packages that have incrementally reduced overall tariff levels, simplified the tariff structure, removed restrictions, replaced nontariff barriers with more transparent tariffs, and encouraged foreign and domestic private investment. In conjunction with its IMF stabilization program, the government has issued reform decrees that stipulate the reduction of taxes, tariffs and quantitative restrictions on exports and imports.

Tariffs

In 1998, Indonesia continued to reduce tariffs. As part of its economic reform program, the government has been implementing a general program of tariff reduction in which it included significant tariff reductions on food and agricultural goods, an area previously heavily protected. In February 1998, the government reduced tariff rates on non-food agricultural products by 5 percentage points and will cut them to a maximum of 10 percent by 2003. Tariffs on all food items were cut to a maximum of 5 percent effective April 1, 1998. Indonesia's applied tariff rates range from 5 to 30 percent. Major exceptions to this range are the 170 percent duty applied to all imported distilled spirits and the 125 percent duty assessed built up passenger vehicles (subject also to a 75 percent import surcharge equaling total import taxes of 200 percent on these vehicles). Automobile complete knockdown kits (CKD) are assessed import duties that range from zero to 65 percent, depending upon the vehicle category and local content incorporated. All processed goods are subject to a 10 percent value-added tax. A luxury tax ranging from 20 percent to 35 percent is also levied on certain products. For example, the combination of tariff, VAT, and luxury tax results in an applied tariff of 271 percent for imported wine. The auto luxury taxes are assessed based on the net selling price, engine size and local content levels. Despite Indonesia's tariff reductions as specified in their IMF Memoranda of Economic and Financial Policy (MEFP), companies in several sectors fear that non-competitive practices will continue once the economic crisis has abated. Several current tariff rates are temporary and unbound. These rates are lower than Indonesia's commitments under the Uruguay Round bound tariff rate, and are therefore believed to be vulnerable to increases by Indonesia.

In May 1995, the Indonesian Government unveiled a comprehensive tariff-reduction package covering roughly two thirds of all traded goods, designed to reduce most tariffs to under 5 percent by 2003. The package stipulated that all tariff items with a rate of 20 percent or less would be reduced to no greater than 5 percent by 2000, and items with rates of more than 20 percent would be reduced to no more than 20 percent by 1998, and 10 percent by 2003. Exclusions from these tariff cuts for chemical, metal, and agricultural products have been removed, leaving in place the exclusion for automobiles. This tariff reform generally extends Indonesia's commitments under the Association of Southeast Asian Nations (ASEAN) Free Trade Area (AFTA) on an MFN basis.

U. S. industries have expressed concern over access to Indonesian markets which remains restricted by various trade barriers. These complaints cite arbitrary valuations for tariff assessments, and tariffs and luxury taxes imposed on imported products (in addition to a 10 percent VAT applied to all processed goods): large motorcycles (150 percent import duty; 35 percent luxury tax), toys (10-20 percent import duty), wine (40 percent import tariff; 35 percent luxury tax; 2.5 percent local service tax), distilled spirits (170 percent import tariff; 35 percent luxury tax), air conditioning and refrigeration equipment (10-15 percent tariff; some items subject to 20 percent luxury tax), forest products (0-10 percent tariff), and soda ash (5 percent tariff).

As of January 1999, 59.4 percent of Indonesia's tariff lines were assessed import duties ranging between 0 and 5 percent. Indonesia's average unweighted tariff is 9.5 percent, compared to 20 percent in 1994. In the Uruguay Round market access negotiations, Indonesia committed to bind 94.6 percent of its tariff items, mostly at ceiling bindings of 40 percent. Exceptions to the 40 percent binding include automobiles, iron, steel, and some chemical products. In accordance with the WTO Agreement on Agriculture, Indonesia has agreed to tariffy its nontariff barriers on agricultural products. Some of the exceptions to the 40 percent tariff bindings are still heavily protected. For example, when the Indonesian Government lifted the import ban on completely built-up cars in 1993, it replaced the ban with duties of up to 200 percent and import surcharges of 100 percent. The import levies were decreased in a subsequent deregulation package, but tariffs of up to 125 percent are still compounded by import surcharges of up to 75 percent on completely built-up models. Indonesia has committed to remove import surcharges on items bound in the Uruguay Round by the year 2005. Indonesia's pioneer auto program (see also "Investment Barriers"), was found to be in violation of Indonesia's WTO commitments by the WTO dispute settlement Appellate Body in July 1998, upholding the earlier Panel finding.

Quantitative Restrictions

Before agreement on Indonesia's IMF program, the sole importer and distributor of major bulk food commodities, such as wheat, rice, sugar, and soybeans, was the National Logistics Agency (BULOG), a state trading entity. Prices of these commodities were often higher than world market prices or heavily subsidized. As a result of the IMF stabilization program, the role of the National Logistics Agency (BULOG) has been sharply curtailed. Current regulations now permit private companies to import and distribute wheat, wheat flour, soybeans, garlic, and sugar. BULOG retains the authority to maintain the country's rice stabilization program and therefore continue imports as needed. At the present time, the BULOG maintains the exclusive right to import rice. This state trading of rice prevents U.S. rice exporters from having direct access to the Indonesian market. BULOG no longer imports any other commodities. Local content regulations on dairy products were eliminated on February 1, 1998. Indonesia has agreed to phase out all quantitative import restrictions other than those justified for health, safety, environment, and security reasons by the end of the IMF program period (November 2001). Also, there are quantitative restrictions on imports of wines and distilled spirits, and industry complains that only a small portion is allocated for domestic sales with the majority going to duty-free stores.

Import Licensing

The government continues to reduce the number of items subject to import restrictions and special licensing requirements. Approximately 160 tariff lines still remain subject to restrictive import licenses, down from 261 in 1994 and 1,112 lines in 1990. However, some U. S. industries continue to express concern over Indonesia's license and quota system that operates as a de facto ban on imports such as motorcycles, wine, and films. For goods that continue to be regulated, the following import license categories exist (number of affected tariff lines provided in parentheses): registered importers,-- alcoholic beverages {only 2 companies approved since 1983} (27), hand tools (6); producing importers -- artificial sweeteners (3), propylene granules (2),engines and pumps (5), tractors (3), knocked-down electronic keyboards (1), and scrap materials (57); approved importers/sole agents -- motor vehicles (47); state oil company PERTAMINA -- lube oil (3); PT Dahana -- explosives (4). In accordance with Indonesia's WTO commitments, the nontariff barriers on items not controlled by state trading agencies will be removed over a ten-year period.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In May 1990, the Indonesian Government issued a decree that states that the Department of Health must decide within one year of receipt of an application whether to grant registration for new foreign pharmaceutical products. In practice, registration can take much longer, although companies report the process is slowly improving. Foreign pharmaceutical firms have complained that copied products sometimes become available on the local market before their products are registered.

Revised maximum pesticide residues (MRLs) for all food commodities were announced in August 1996. These MRLs are largely consistent with the international CODEX standards. The United States has commented on the unworkability of Indonesia's WTO notification that shipment-by-shipment certification would be required. U.S. industry reports that all foods, including distilled spirits, must undergo a costly, complex, and barrier-laden registration process with the Ministry of Health every four years.

GOVERNMENT PROCUREMENT

The government is in the process of revising its law on government procurement, which was enacted in 1994. Most large government contracts are financed by bilateral or multilateral donors each of which imposes its own procurement requirements. For large, government-funded projects, international competitive bidding practices must be followed. The government seeks concessional financing, which includes a 2.5 percent interest rate, a 25-year repayment period, and a 7-year grace period. In May 1998, the government and state-owned enterprises began to investigate some possible procurement and contracting irregularities in response to domestic demands to eradicate corruption, collusion, and nepotism.

Some projects do proceed on less concessional terms. Foreign firms bidding on certain government-sponsored construction or procurement projects may be asked to purchase and export the equivalent in selected Indonesian products, but this rarely occurs. Government departments and institutes and state and regional government corporations are expected to utilize domestic goods and services to the maximum extent feasible, but this is not mandatory for foreign-aid-financed goods and services procurement. State-owned enterprises that have offered shares to the public through the stock exchange are exempted from government procurement regulations.

Some U.S. companies have expressed concern with regard to Indonesian procurement policies requiring local participation and content, that in many situations impede U.S. companies' ability to compete in this market. Non-transparent government procurement policies have also rendered competition difficult. Concerns, in particular, have focused on the engineering and construction industries.

Foreign joint ventures are not eligible to tender for government pharmaceuticals procurement. The requirement that doctors employed in government institutions prescribe only listed generic drugs also prevents the procurement of foreign pharmaceutical products. Foreign companies are generally prohibited from competing in the generic drug market whose prices are controlled. Because of the economic crisis during 1998, the price of pharmaceuticals in the private sector has increased by up to 100 percent. There are current government discussions over whether to expand the list of generic drugs and give subsidizes for purchases of raw materials from overseas.

In January 1998, the GOI issued a presidential decree regulating cooperation between the government and the private sector in the provision and/or management of new infrastructure projects. The decree requires that infrastructure projects, including independent power projects, be publicly tendered on a competitive basis rather than negotiated with a single preferred company. The decree also contains provisions for the legitimate use of intellectual property in projects. The government announced in December 1998 that negotiations with independent power projects over the terms of their power purchase agreements would begin in February 1999, in light of changing price and demand forces in Indonesia.

EXPORT SUBSIDIES

Since 1992, the Indonesian Government has offered rediscount facilities for "special exporters." The program had previously been restricted to certain industries, but in January 1999 its coverage was extended to qualifying exporters from any industry. Exporters may sell their export letters of credit or other instruments to the central bank, Bank Indonesia (BI), through foreign exchange banks. BI rediscounts the export drafts at SIBOR for special exporters and SIBOR plus one for general exporters. In September 1998, in an effort to get trade financing moving again, the government announced a credit guarantee program that guarantees up to 80 percent of the value of letters of credit, minimizing commercial risk for Indonesian banks. The government also maintains several credit programs that provide subsidized loans, primarily to agriculture and small and medium businesses.

Companies producing 65 percent for export may apply for restitution of import duties paid on inputs that are subsequently re-exported in a finished form. Import-duty exemptions may also be granted for capital equipment, machinery, and raw materials needed for the initial investment. Companies located in bonded or export-processing zones pay no duty until the portion of production destined for the domestic market is released, at which time duty is owed only on that portion.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Under the Special 301 provisions of the 1988 Omnibus Trade and Competitiveness Act, the U.S. Trade Representative raised Indonesia to the "priority watch list" in 1996, from the "watch list" where it had been since 1989. It remained on the "priority watch list" in 1997 and 1998. Given the severe economic downturn, Indonesia has not been able to devote significant human or financial resources to either improving or enforcing its intellectual property regime.

IPR protection shortcomings mentioned by industry include: software, video and VCD piracy, pharmaceutical patent infringement, apparel trademark counterfeiting; audiovisual market access barriers; inconsistent enforcement and an ineffective legal system; and amendments to the copyright, patent and trademark laws that are not completely TRIPs consistent. The Indonesian Government often responds to U.S. companies that raise specific complaints about pirated goods and trademark abuse, but the court system can be capricious, and punishment of pirates of protected intellectual property is very rare. In the view of some U.S. firms, the lack of sophisticated intellectual property protection laws and regulations acts as a considerable disincentive for industries to invest substantially in high technology projects in Indonesia. Amendments to the patent, trademark, and copyright laws enacted in 1997 were intended to bring Indonesia's laws into compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), but industry has raised questions in certain areas.

Indonesia has acceded to the following international conventions on intellectual property: the Paris Convention for the Protection of Industrial Property; the Berne Convention for the Protection of Literary and Artistic Works (Paris 1971)[with a reservation on Article 33]; the WIPO Copyright Treaty, the Patent Cooperation Treaty; the Trademark Law Treaty; the World Intellectual Property Organization Copyright Treaty; the Nice Agreement for the International Classification of Unclassified Goods and Services; and the Strasbourg Agreement Concerning the International Patent Classification. Indonesia is a member of the World Intellectual Property Organization (WIPO).

Patents

Indonesia's first patent law went into effect on August 1, 1991. The amended law passed in 1997 improved the situation to some extent. For example, the term of protection has been extended to 20 years with a two-year extension period; a patent shall be canceled only in the event the patent holder fails to pay annual fees within a certain time; use of product or process invention before grant of patent shall constitute a patent infringement; and the Article in the prior law that denied the right to prevent importation was deleted to comply with Article 28 of the TRIPs Agreement. Also, Indonesia now provides product patent protection for foods and beverages. In some areas, improvements were made that were not required by the TRIPs

Agreement. For example, the definition of the term "patent examiner" was enlarged to include examiners in other industrial property offices. This could facilitate work-sharing in the search and examination process. Also, the exclusion from patentability for plant and animal varieties was deleted.

Unfortunately, some of the problems in the previous law were not corrected and new problems were introduced by the 1997 amendment. Examples include: importation still does not meet the requirement to "work" or exploit the invention domestically as required by the first paragraph of TRIPs Article 27; the right to prevent importation of products made by patented processes is available only if the process is also worked in Indonesia; the content of voluntary patent licenses is more restricted than permitted by TRIPs Article 40; there is no requirement that Government use of patented invention comply with the provisions of TRIPs Article 31; inventions that are contrary to Indonesian laws and regulations are excluded from patentability in violation of Article 4 of the Paris Convention and TRIPs Article 2; and the standard for excluding inventions contrary to the ordre public is inconsistent with the requirements of paragraph 2 of TRIPs Article 27.

U.S. pharmaceutical industries feel that Indonesia's current patent law wording is suitably ambiguous so to be difficult to fight patent infringement cases. Furthermore, they remain concerned that the present patent law does not satisfy the TRIPs requirements; that it includes compulsory licensing provisions, a provision allowing the import of certain patented raw materials; and law and regulations on local working requirements and patent cancellation. The Pharmaceutical Research and Manufacturers of America (PhRMA) also pointed out the incidence of smuggled counterfeit drugs to neighboring countries, the issue of corruption, joint venture requirements, generic drug prescriptions and supply to government institutions and taxation.

Trademarks

The April 1993 trademark law provides for determination of trademark rights by registration rather than by first use. The law provides for protection for well-known marks but offers no procedures or grounds for owners of well-known marks to clear the trademark register of existing registrations infringing on well-known marks. Currently, the only avenue for challenging existing trademark registrations in Indonesia is to bring a court challenge. Cancellation must be sought within five years from the date of registration. U.S. companies have found it difficult to protect their well-known marks, since judicial and administrative processes can be very time consuming and unreliable. Injunctive relief is not provided, even when a lower court invalidates false trademark registrations. The 1997 amended trademark law enhances protection by providing for administrative cancellation of registrations competing with well-known marks.

The International Anticounterfeiting Coalition (IACC) has stressed the problems surrounding the protection of well-known marks; specifically, the length of time it takes the system to consider challenges to trademark applications, the ability of Indonesian nationals to file applications for well-known marks and the inconsistent application of trademark laws. The complaint is also that the existence of the amended law has not resulted in effective protection or enforcement of IPR.

Copyrights

In 1997, Indonesia enacted amendments to its copyright law that generally brought it closer to conformity with international standards for copyright protection. The law includes provisions to: recognize rental rights for copyright holders in the areas of audiovisual, cinematographic, and computer software, which are protected as literary works; adds protections for neighboring rights in sound recordings and rights of producers of phonograms; copyright licensing; and increases the term of protection for many copyrightable works to fifty (50) years, as required under the TRIPs Agreement.

Indonesia

A bilateral copyright agreement between the United States and Indonesia that went into effect in August 1989 extended national treatment to each other's copyrighted works. The Indonesian Government recognizes the problem of copyright piracy and indicated that it is willing to work with copyright holders against piracy, but enforcement is still poor. Since 1996, there has been rampant piracy of video compact disks (VCDs) in Indonesia which has disrupted the market for cinemas, as well as sale and rental markets for legitimate videos and laser disks. In November 1998, the government announced that sellers of pirated VCDs had until late February to convert to selling legitimate product, after which it would begin stringent enforcement. U.S. industry reports that the government recently has carried out a few well publicized anti-piracy raids that netted a sizable amount of pirate optical media products on the verge of export. However, the Motion Picture Association feels that there will be no anti-piracy enforcement until the Indonesian Government regains control of the public order.

The major problems cited by the International Intellectual Property Alliance (IIPA) with the Indonesian copyright regime are the following: copyright infringement of business software, Video Compact Discs (VCD), laser discs, video games and books; market access restrictions; insufficient enforcement efforts; an ineffective court system and deterrence penalties; restrictions on importation, distribution and retailing by other than 100% owned Indonesian companies; a ban on foreign investment in cinema construction and development of video retail outlets; and restrictions on videocassette duplication.

New Technologies and Trade Secrets

Biotechnology and integrated circuit layout designs are not protected under Indonesian intellectual property laws. The government is in the process of preparing laws on trade secrets, industrial designs, and integrated circuits. Indonesia is a member of the World Intellectual Property Organization (WIPO) and is a party to the substantive provisions of the 1934 London Text of the Paris Convention for the Protection of Industrial Property.

SERVICES BARRIERS

Despite some loosening of restrictions, particularly in the financial sector, services trade barriers to entry continue to exist in many sectors. Foreign accounting firms must operate through technical assistance arrangements with local firms, and citizenship is a requirement for licensing as an accountant. Foreign agents and auditors may act only as consultants and cannot sign audit reports. Foreign law firms cannot establish a legal practice in Indonesia. Indonesian citizenship as well as graduation from an Indonesian legal facility or an institution recognized as the equivalent is a requirement to be admitted to the bar. Foreign consulting engineers can operate only by forming a joint-venture with local partners in Indonesia.

Distribution

Indonesia has been gradually liberalizing distribution and its agreement with the IMF calls for an end to restrictions on trade in the domestic market. In February 1998, restrictive marketing arrangements for cement, paper, cloves, other spices, and plywood were eliminated. Indonesia is also opening wholesale and retail trade to foreign investment. In September 1998, the government issued a decree stipulating that distribution and retail companies may be 100 percent foreign owned, canceling the 49 percent foreign ownership limit previously in effect. The regulation carries a requirement that foreign firms (PMA) establish “partnership participation” with a domestic small scale enterprise, but the details of how this requirement will be interpreted and applied are not yet clear.

A number of U.S. companies have expressed concern that existing restrictions increase costs and impede their ability to effectively market and service their products in Indonesia, thereby limiting choice and competition, e.g., films and videos. Express delivery firms have expressed concern with their inability to wholly own or control express firms in Indonesia, obtain courier licenses, truck licenses, customs brokerage licenses or bonded warehouse licenses, and to self-handle their aircraft in Indonesia.

GP Farmasi (local Pharmaceutical Association) has agreed to implement a Code of Marketing Practices which is adapted from IFPMA, IPMG and the Philippine Association codes. The Pharmaceutical Research and Manufacturers of America has expressed concern that local companies do not abide by such a code.

Indonesia's Hardwood Plywood Marketing Board (APKINDO) was abolished as a marketing cartel February 1, 1998. There are no longer any restrictions on pricing, product mix or shipping arrangements. This could offer increased opportunities to U.S. exporters of panel products, but the U.S. industry reports that the wood products industry is still heavily managed and influenced by the government.

Financial Services

In its December 1997 WTO financial services offer, Indonesia committed to allow 100 percent foreign ownership for non-bank financial companies that are publicly listed, including insurance and securities firms. The government also guaranteed the access of existing financial services firms in its market. Restrictions on joint venture banks, where the foreign ownership limit is 85 percent, were retained in the WTO offer. Also, multi-finance companies with a foreign partner require 100 percent more paid-in capital than domestic/locally owned multi-finance companies. However, in November 1998, the government passed amendments to the 1992 banking law that now allow 100 percent foreign ownership of Indonesian banks. Indonesia committed to removing discriminatory capital requirements on financial firms by the end of 1998 but legislation is still pending. All insurance in Indonesia must be purchased from either a domestic or joint venture company. The only exceptions are for unavailability of coverage in Indonesia and total foreign ownership of the insured entity.

Banking: As of January 1999, the banking sector in Indonesia was slated for massive recapitalization with government assistance. Consolidation is expected. The World Bank, Asian Development Bank, and the IMF were closely involved in the restructuring plans. Restrictions on branching and sub-branching for joint venture banks and foreign branches were lifted in 1998.

Securities: In 1998, the government removed restrictions on foreign ownership of securities firms, pursuant to its offer in the WTO financial services agreement.

Motion Picture Market Access

Indonesia prohibits foreign film and videotape distributors from establishing branches or subsidiaries. All importation and distribution is restricted by the film law to 100 percent Indonesian-owned companies. Importation and in-country distribution of U.S. films must be handled through a single organization, the European and American Film Importers' Association (AIFEA). The quota on videotape imports was removed in 1998 but annual import quotas still apply to foreign films. Duties, taxes, licensing, and other necessary payments also act as barriers to the film industry.

Telecommunications Services

In the WTO negotiations on basic telecommunications services, Indonesia made several commitments that, with one exception, did not go beyond the status quo. Its adoption of the reference price on regulatory principles was a welcome step. It set a foreign investment limit of 35 percent for telecommunications services companies. Indonesia maintained excessively long periods for existing restrictions on the number of services providers and made no guarantee of allowing unrestricted market access to international services in 2005, long distance in 2006, or local services in 2001. Fixed line services, including local and domestic long distance services, telex services, etc., must be provided in conjunction with the partially privatized national firm PT Telkom. Indonesia retained an economic needs test for mobile cellular and PCS providers.

INVESTMENT BARRIERS

The Indonesian Government is committed to increasing foreign investment and to reducing burdensome bureaucratic procedures and substantive requirements for foreign investors. Indonesian law provides for both 100 percent direct foreign investment projects and joint ventures with a minimum Indonesian equity of 5 percent. In 1998, the government opened several previously restricted sectors to foreign investment, including harbors, electricity generation, telecommunications, shipping, airlines, railways, roads, and water supply. Some sectors remain restricted or closed to foreign investment and are implemented through a “negative list.” The most recent negative list was issued in July 1998 and includes television and radio broadcasting, theatrical exhibition, both film and video distribution, and forest concessions.

Foreign capital investment is primarily governed by the foreign capital investment law, as well as by presidential and ministerial decrees. The Capital Investment Coordinating Board (BKPM) and other relevant agencies must approve all proposed foreign-manufacturing investments in Indonesia. The approval process is not used to block or restrict foreign investment. Obtaining the required permits, however, can be cumbersome and time-consuming. The most often heard complaint from investors about the Capital Investment Coordinating Board is that it is not a one stop investment shop. Investment in petroleum extraction, mining, forestry, telecommunications, and banking is covered by specific laws and regulations and handled by relevant technical agencies. Joint ventures with a majority Indonesian share, or in which Indonesians own 45 percent of shares and in which at least 20 percent of total stock is sold through the Indonesian stock market, are treated as domestic companies for certain purposes. This includes the ability to borrow short-term working capital in rupiah from state banks.

In 1996, the Indonesian Government issued a regulation under which tax exemptions may be provided to certain companies. This "tax holiday" was originally conceived as a way to attract large investments which Indonesia believed it was losing to other countries in the region with better tax incentives. The program was never fully implemented, however, and the government is in the process of revising it to target specific industries to stimulate both domestic and foreign investment.

Indonesia has notified the WTO regarding measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content requirements for utility boilers. Proper notification allows developing country WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. Indonesia therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

Auto Policies: the 1993 Measures and the 1996 Pioneer Program

By virtue of the successful challenge by the United States, the EU and Japan of the WTO consistency of Indonesia's auto policies, Indonesia must bring its auto policies into compliance with the report of the WTO dispute settlement panel examining Indonesia's auto programs. The WTO panel issued its final report in June 1998, finding that the provision by Indonesia of local content subsidies under both its 1993 Program and its National Car Program violates Article III of the GATT and Article 2 of the Agreement on TRIMs. The panel also found that the extension of certain of these subsidies to automobiles imported from Korea violates Article I of the GATT. When this panel ruling is implemented by the Government of Indonesia, the various policy elements that conferred the benefits associated with " National Car" status will be addressed and removed as a barrier to U.S. exports.

The Government of Indonesia indicated its intention to fully comply with the recommendation and rulings of the DSB adopted on July 23, 1998. The GOI stated that the February 1996 car program had been revoked on January 21, 1998 and that Indonesia would meet its WTO obligations with regard to the 1993 car program no later than October 23, 1999. The Government of Indonesia has further specified in writing that the Indonesia firm intended to be the producer of the national car, PT Timor, will be required to reimburse the Government of Indonesia for the import duties and luxury taxes owed on the KIA sedans imported from Korea. On October 6, the EU requested WTO arbitration to determine the reasonable time period of implementation of the DSB rulings on the 1993 program. The United States participated in the arbitration process that resulted in the ruling that Indonesia must implement fully by July 23, 1999, or twelve months from the date of the panel report adoption.

OTHER BARRIERS

Transparency

A lack of transparency and corruption are significant problems for companies doing business in Indonesia, and the government has stepped up efforts to address these concerns. Demands for "facilitation fees" to obtain required permits or licenses, government award of contracts and concessions based on personal relations, and a legal system that is often perceived as arbitrary are frequently cited problems. A 1996 report from Bappenas (the National Planning and Development Board) recognized the judicial system's shortcomings and noted the "need to reform judicial administration to ensure the speedy resolution of conflicts and an effective appeals system." It also called for improving " the skills and performance of legal and judicial personnel by strengthening ethical and professional standards, transparency, and accountability." Much of the substantial deregulation introduced since July 1997 and popular demands for investigations into corrupt, collusive, and nepotistic practices are aimed at tackling some of the problems which either countenance these problems or which have arisen from them. The parliament is in the process of considering a bill intended to regulate anti-competitive behavior.

ISRAEL

In 1998, the U.S. trade deficit with Israel was $1.7 billion, an increase of $317 million from the U.S. trade deficit of in 1997. U.S. merchandise exports to Israel were $7.0 billion, an increase of $985 million (16.4 percent) from the level of U.S. exports to Israel in 1997. Israel was the United States' 20th largest export market in 1998. U.S. imports from Israel were $8.6 billion in 1998, an increase of $1.3 billion (17.8 percent) from the level of imports in 1997. The stock of U.S. foreign direct investment (FDI) in Israel in 1997 was $2.3 billion, an increase of 10.9 percent from the level of U.S. FDI in 1996. U.S. FDI in Israel is concentrated largely in the banking, manufacturing and financial service sectors, but a substantial portion of new investment approvals are in infrastructure sectors.

The United States-Israel Free Trade Area Agreement

The United States-Israel FTAA, implemented on September 1, 1985, called for phased tariff reductions culminating in the complete elimination of duties on non-agricultural products effective January 1, 1995. The agreement eliminates most trade barriers between the United States and Israel, leaving Israel's agricultural sector as the only one where substantial non-tariff barriers and levies remain. The FTAA also provides for a consultative mechanism between the parties. The U.S.-Israel Joint Economic Committee (JEC), created to supervise implementation of the agreement, has proved itself a useful mechanism for addressing a wide range of bilateral trade issues.

Given the substantial trade barriers remaining in the agricultural sector, on November 4, 1996, the United States and Israel executed an Agricultural Agreement establishing a five-year program of gradual and steady market access liberalization for food and agricultural products.

IMPORT POLICIES

Agriculture

Israel maintains extensive restrictions on food and agricultural imports. These include tariff rate quotas (TRQs), prohibitive levies, and import bans. Quantitative or non-tariff measures (such as TRQs and bans) are permitted under the 1985 FTAA and, by inference, the 1996 Agriculture Agreement, on the basis of agricultural policy considerations or on religious grounds.

According to the 1996 Agricultural Agreement, all U.S. food and agricultural products have access to the Israeli market under one of three different categories: duty-free; TRQs; or preferential tariffs, which are generally set at 10 percent below Israel's Most-Favored Nation (MFN) rates. Although exports of many U.S. agricultural products to Israel are still restricted, the 1966 Agreement provides for improved access during each year of the agreement by increasing the TRQs and reducing tariff levels for a significant number of U.S. goods.

Despite improved market access for many U.S. agricultural products, a number of significant problems remain. Although Israel has agreed to improve transparency in the calculation of levies, progress remains uneven. The principal problem lies in the calculation of domestic costs of production in Israel as the basis for high import levies imposed on imported food and agricultural goods. Another issue is the treatment of certain imports that is inconsistent with Article VI of the 1985 FTAA. For example, Israel imposes levies on processed food products such as pasta, pastry, baked goods, some modified starches and processed fish, none of which are subject to agricultural policy considerations as required by Article VI. Despite increased local currency CIF values resulting from a 25-percent depreciation of the shekel between November 1996 and November 1998, in November 1998, the government raised, by an average 20 percent, levies based on production costs.

U.S. agricultural producers have experienced difficulties with the Israeli TRQ system. U.S. officials have received many complaints about Israeli delays in issuing import licenses and have expressed concern about the lack of timeliness or transparency in the TRQ licensing process.

U.S. meat exports to Israel face an especially difficult environment due to a complete ban on imports of all non-kosher meat and meat products and very restrictive kashrut (kosher) certification requirements which U.S. plants cannot easily meet. The import ban is administered in violation of Article 8 of the FTA, which only permits prohibitions on religious grounds if applied in accordance with the principle of national treatment. Since non-kosher meat is produced and sold locally in Israel, U.S. exports clearly are being denied equal access. The United States has requested consultations with the Government of Israeli under the provisions of the FTAA.

Israel imposed a prohibitive levy on imports of U.S. lobster on September 15, 1998. Although Israeli officials claimed this levy would be eliminated soon, thus far no action has been taken.

Israel prevents the increase of quality U.S. wine imports with prohibitive duties and technical barriers to trade involving chemical testing and labeling requirements not demanded of domestic producers. As provided in the 1996 Agricultural Agreement, the United States has requested that the Government of Israeli enter into discussions to improve market access for U.S. wine.

In December 1997, the United States and Israel agreed to a 2,000 metric ton TRQ at a duty of $1.80/kg for shelled almonds and a 180 ton TRQ at $1.35/kg for in-shell almonds in an attempt to resolve a disagreement on market access for U.S. almonds. Imports intended for use in chocolate manufacturing would continue to enter duty-free. Although U.S. almond exports to Israel in 1998 exceeded the negotiated TRQ levels, U.S. exporters have cited problems with timing and transparency in the allocation of import licenses. U.S. industry representatives also argue that the current arrangement does not permit additional access when there are shortages in the local Israeli market.

Elimination of these barriers to agricultural products could result in a potential increase in U.S. exports of USD 25-100 million.

TAMA

The Government of Israel uses a system known as "TAMA" to approximate the local wholesale price of a good by adding "estimated profits," insurance, and inland freight to the declared value of an import for purposes of calculating purchase taxes. Coefficients for calculation of the TAMA vary from industry to industry and from product to product, but the effect is to establish higher taxes on imports than are applied to domestic products. In 1991, at the urging of the United States, the Government of Israel revised the TAMA calculation system, providing most registered importers with the option to declare the actual wholesale value of their products. Although the new arrangement has been in force since 1991, not a single importer has opted for the new system. Israeli officials claim that the importers are reluctant to use the new system because they have determined that the former TAMA rates are more advantageous. Importers, however, cite a variety of problems with the optional system, including the inability to modify prices once they have been declared. As the new optional TAMA has not operated as anticipated, the United States continues to seek to eliminate the discriminatory effect of TAMA on U.S. exports, which could result in a potential increase in U.S. exports of between USD 10 and 25 million.

Israel

Harama

Prior to January 1998, Israel had maintained a customs practice known as "harama," meaning "uplift." Harama was applied at the pre-duty stage to the CIF value of goods to bring the value of the products to an acceptable level for customs valuation. In January 1998, Israel implemented the WTO Customs Valuation Agreement, including enabling legislation, effectively eliminating this barrier.

Purchase Taxes

Purchase taxes of 25 to 95 percent are applied on goods ranging from automobiles and refrigerators to alcoholic beverages and cigarettes. On many other products, including consumer electronics, building inputs, and office equipment, Israel has reduced or eliminated purchase taxes. Where remaining, purchase taxes apply to both local and foreign products. However, where there is no local production of the imported good, the purchase tax becomes a duty-equivalent charge. We estimate elimination of the purchase tax would lead to a potential increase in U.S. exports of between $25 and 100 million.

Wharfage and Port Fees

Until 1995, Israel's customs authorities charged importers 1.5 percent of the import's CIF value for use of ports and stevedores, whereas exporters faced no charges. In effect, imports were subsidizing exports. After several years of pressing Israel to eliminate this GATT-inconsistent policy, in 1995 the United State received a commitment from the Government of Israel to equalize port fees for exporters and importers at 0.6 percent, to take effect by the end of 1996. As a first step, in early 1996, Israel reduced the import fee to 1.3 percent and imposed an export fee of 0.2 percent. No further progress has occurred and 1998 ended without fulfillment of the commitment. Although Israel has indicated it will narrow the gap between the two fees, the United States continues to pursue equalization of these fees.

Tariffs

All remaining duties on United States non-agricultural products were eliminated on January 1, 1995.

Kosher Certification

The United States-Israel FTAA permits measures relating to prohibitions on religious grounds, "provided that they are applied in accordance with the principle of national treatment." In certain cases, United States businesses have complained that the process for granting kosher certificates is discriminatory, and serves to protect domestic products. The process for obtaining kashrut certification is not transparent, as the party seeking certification must pay the "costs" of rabbinical inspection to determine that the ingredients and manufacturing of the product satisfy religious standards. Some businesses claim the fee charged bears no relationship to the actual "costs" of inspection (in some cases, a percentage of sales has been charged, for example). Moreover, indirect supervision by a rabbi resident in the country of manufacture is permitted in some cases but not in others. Significant problems remain in these sensitive sectors. The United States is pursuing these complaints directly with the Government of Israel. Elimination of this barrier could result in an increase in United States exports of an estimated USD 10-25 million.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Israel has reduced the burden of some discriminatory measures against importers. In 1990, Israel agreed to harmonize standards treatment, dropping health and safety standards applied only to imports or making them mandatory for all products. Implementation of this promise has been slow. Enforcement of mandatory standards on domestic producers can be spotty, and in some cases (e.g., refrigerators, auto headlights, plywood, carpets, and labeling for food items), standards, as written, enable domestic goods to meet requirements more easily than imports. In November 1998, Israel revised the official standards for 170 foods, replacing rigid weight and measure requirements with a requirement to show the unit price on labels of non-standard packages, thus eliminating a major barrier to the expansion of United States processed food exports. Elimination of standards barriers could result in a potential increase in United States exports of USD 25-100 million.

GOVERNMENT PROCUREMENT

Israel is a signatory to the WTO Agreement on Government Procurement, which covers most Israeli government entities and government-owned corporations. Open international public tenders are published in the local press. However, government-owned corporations make extensive use of selective tendering procedures.

In accordance with the Israel public tendering law, all international public tenders with a value of at least $100,000 contain requirements for "industrial cooperation" (IC) with Israeli entities in the amount of 35 percent of the value of the total contract. United States companies may invest in local industry, co-develop or co-produce, subcontract to local companies, or purchase from Israeli industry to satisfy the IC offset requirement. United States suppliers have found the size and nature of their IC proposal to be a decisive factor in tight tender competitions, despite a recent court decision that prohibits the use of offset proposals in determining award of a bid.

For civilian local currency procurement by the Ministry of Defense (MOD), a U.S.-Israeli MOU, extended in December 1997, gives United States competitors equal status with domestic suppliers. Despite this MOU, few United States companies have been successful in supplying the MOD. United States suppliers have expressed concerns about the lack of transparency and apparent lack of appropriate justification for excluding U.S. suppliers from MOD tendering opportunities.

LACK OF INTELLECTUAL PROPERTY PROTECTION

In April 1998, Israel was elevated to the “Special 301 Priority Watch List,” largely due to widespread audio CD, cable television, video, and software piracy. Israel currently has an outdated copyright law with low penalties for piracy offenses, which, combined with weak enforcement, has resulted in continued high levels of piracy in these industries in 1998. A draft copyright law has been under review for several years, and the government of Israel has stated its intention to enact and implement the law before December 31, 1999. The proposed legislation is expected to include enhanced rights of distribution in connection with rental rights and imports of copyrighted materials. Rental rights will cover all protected works, including sound recordings, cinematographic works, and computer programs. The legislation also is to include enhanced penalties with fines calculated on a per copy basis to deter copyright piracy on a commercial scale. The two major movie distribution chains generally comply with copyright requirements. A cable broadcast law is also under consideration.

Current Israeli patent law contains overly broad licensing provisions concerning compulsory issuance for dependent and non-working patents. A draft revision of Israel's patent law, now under review, is expected to upgrade patent protection and eliminate compulsory licensing.
Also under consideration are revised laws for the protection of industrial designs, trademarks, and integrated circuits.

Despite U.S. objections, the Government of Israel enacted in 1998 an amendment to the patent law which allows non-patent holders to manufacture patented pharmaceutical products prior to the expiration of patent rights in order to submit data to foreign and Israeli health authorities to gain marketing approval. In addition, in 1998, the Israeli Government introduced legislation to permit the unauthorized parallel importation of pharmaceutical, patented or otherwise, into Israel and to sanction unfair use of test data. In February 1999, despite strenuous U.S. objections, the Knesset approved the legislation.

Israel is a member of the Paris Convention for the Protection of Industrial Property, the Universal Copyright Convention, and the Berne Copyright Convention. In addition, as a signatory to the WTO Agreement on Trade-related Aspects of Intellectual Property (TRIPs), Israel is in the process of making all revisions to its laws necessary to meet the agreement's requirements. U.S. industry estimates losses from software, video, and CD/cassette piracy at $141.2 million. Industry has not provided estimates of 1998 losses due to unauthorized production of patented products.

SERVICES BARRIERS

Telecommunications

Israel's telecommunications sector is being liberalized gradually. Foreign companies participate in joint ventures providing cellular and international telephone service, and domestic phone service is to be opened to competition, including competition involving foreign entities, in 1999. A third cellular licensee was brought to market in 1998, cable regulations will be revised to increase competition, and the first DBS satellite broadcast license was approved in January 1999. Israel's dominant telecommunications carrier, has maintained a discriminatory interconnection charge on calls to and from the United States and Canada. The fee is roughly one-third higher for North American traffic than for traffic to any other part of the world. Israel has made WTO commitments to charge non-discriminatory and cost-based rates for interconnection, a practice which should have been discontinued when these commitments went into force on February 6, 1998.

Other

Israel's financial services sector generally is open to foreign participation, subject to standard regulatory requirements. On behalf of a U.S. company, U.S. officials have raised concerns about the Israeli Postal Authority's involvement in commercial armored courier services, which due to subsidies and tax exemptions, allows it to charge a price substantially lower than its private sector competitors.

INVESTMENT BARRIERS

The Israeli Government actively solicits foreign private investment, including joint ventures, especially in industries involving exports, tourism, telecommunications, and high technology. Foreign firms are accorded national treatment in terms of taxation and labor relations, and are eligible for incentives for designated "approved" investments in priority development zones. There are generally no ownership restrictions, but the foreign entity must be registered in Israel. Profits, dividends, and rents generally can be repatriated without difficulty through a licensed bank.

About 700 major U.S. companies have subsidiaries in Israel, and some 170 Israeli companies have subsidiaries in the United States. Investment in regulated sectors, including banking, insurance, and defense industries, requires prior government approval.

Israel is a member of the International Center for the Settlement of Investment Disputes (ICSID) and a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

ELECTRONIC COMMERCE

Israel is on the cutting edge of Internet software developments and supports U.S. efforts to ensure that electronic transmissions will not be subject to tariffs. No barriers to electronic commerce have been reported by U.S. industry.

JAPAN

Japan ran a global current account surplus of $121 billion in 1998, a 39 percent increase over 1997, and its global trade surplus rose to $108 billion, a 31-percent increase over 1997 levels. Japan is facing its worst recession since the end of World War II and, as its demand for imports declines and its firms redouble their efforts to sell to healthier markets abroad, the effects of Japan's economic policies will continue to hit the United States. In 1998, the U.S. goods trade deficit with Japan reached $64.1 billion, an increase of $8.4 billion (14.2 percent) from the 1997 level of $55.7 billion. While Japan was the United States' third largest export market in 1998, U.S. merchandise exports to Japan fell to $57.9 billion, a decrease of 11.9 percent from the 1997 level. Although import surges were evident in certain sectors, particularly steel, U.S. imports from Japan rose only 0.5 percent in 1998 (to $122 billion from $121.7 billion in 1997). Japan is more dependent on the U.S. market to absorb its exports than it has been for many years. In 1998, the United States bought about 31 percent of Japan's exports, the highest level since 1990, and close to the all-time high of 36 percent in 1986.

Overview

The United States attaches top priority to opening Japan's markets to U.S. goods and services. Toward this end, the Clinton Administration has continued to emphasize the need for implementation of fiscal stimulus and reform of Japan's financial sector, as well as comprehensive deregulation and market-opening measures to reverse Japan's recession and stimulate sustained economic growth over the medium to long-term.

To open Japan's market, the United States has pursued a multi-faceted approach which has centered upon: (1) encouraging major structural reform and deregulation to open more sectors of Japan's economy to competition; (2) negotiating new trade agreements; (3) monitoring and enforcing existing trade agreements covering key sectors, including autos and auto parts, flat glass, insurance, and government procurement; and (4) addressing concerns through regional and multilateral fora.

Our comprehensive approach to the economic relationship with Japan was first outlined in the United States-Japan Framework for a New Economic Partnership ("Framework Agreement"), signed by President Clinton and then-Prime Minister Miyazawa in July 1993. Under this agreement, the United States and Japan agreed to focus on eliminating sector-specific market access barriers and addressing structural and macroeconomic obstacles. While Japan has reduced its formal tariff rates on imports to very low levels, it maintains a wide range of other market access barriers including non-transparent, discriminatory standards, exclusionary business practices, and a business environment that protects domestic companies and restricts the free flow of competitive foreign goods into its market. An important innovation of the Framework Agreement was its emphasis on objective quantitative and qualitative criteria for monitoring the agreements, which allow the governments to more accurately assess progress under the agreements.

Since 1993, the United States has concluded 35 trade agreements with Japan, covering a wide variety of sectors from autos and auto parts, insurance, civil aviation and harbor practices, to agricultural products, entertainment and high technology. These agreements also address broad structural issues, such as distribution and investment. In each case, the agreements offer new opportunities to U.S. exporters and to others with competitive products and services to offer, as well as to Japanese producers and consumers.

Building on the Framework Agreement, President Clinton and then-Prime Minister Hashimoto initiated in June 1997 the Enhanced Initiative on Deregulation and Competition Policy ("Enhanced Initiative"), which has become the main vehicle for bilateral efforts to promote comprehensive deregulation and strengthen Antimonopoly Law enforcement. The first year of the Enhanced Initiative generated meaningful results in a wide range of sectors. Japan agreed to implement concrete deregulatory measures in each of the sectors covered under the Enhanced Initiative and to include energy as a new sector. Japan also agreed to implement specific measures designed to address structural concerns relating to competition policy, distribution, transparency, and other government practices.

During 1998, the United States pressed Japan to fully implement these deregulatory measures and in October provided Japan with more than 200 proposals aimed at further deregulation of the Japanese economy. The United States is seeking agreement on a new set of deregulatory measures which Japan will implement by Spring 1999.

In January 1998, the United States concluded a Civil Aviation Agreement with Japan. This agreement is aimed at significantly liberalizing the civil aviation market between the United States and Japan, including for both U.S. passenger and cargo carriers, and is expected to increase U.S. aviation service-related exports by $1 billion annually.

In May 1998, President Clinton and then-Prime Minister Hashimoto announced the "U.S.-Japan Joint Statement on Electronic Commerce," which expressed the two nations' agreement that the private sector take the lead in developing the Internet, with government regulation kept to a minimum. It also noted, among other things, that both countries would work in the WTO to see that electronic transmissions on the Internet are kept tariff-free.

The Administration also continued to focus attention in 1998 on the monitoring and enforcement of existing agreements to ensure their complete and successful implementation. The United States pressed Japan to make progress on our bilateral agreements including those covering autos and auto parts; insurance; flat glass; construction; semiconductors; medical devices and pharmaceuticals; and government procurement of computers and of supercomputers. In several areas, such as automotive and flat glass, the United States offered new proposals for generating progress, while proposing ways to update other agreements, such as computers and supercomputers, to make them more effective. The United States hopes to reach agreement with Japan on these proposals in the immediate future.

The United States has also continued to invoke the WTO Dispute Settlement Mechanism to address problems related to market access barriers in Japan. In October, a WTO dispute panel ruled in favor of the United States in its case against Japan regarding its unfairly burdensome and non-transparent requirements on varietal testing of fruits exported to Japan, finding that those requirements have no scientific basis. Both parties appealed the decision and, in February 1999, the WTO Appellate Body upheld the panel's findings in favor of the United States.

In addition, the Administration continued to press Japan for meaningful access to its photographic film and paper sector through its market-opening initiative announced in February 1998. The U.S. Government released its first semi-annual film monitoring report in August reviewing Japan's implementation of formal representations it made to the WTO regarding the openness of its photographic film and paper market. The report called on Japan to take additional action to open its photographic film and paper market and to ensure the elimination of practices that unreasonably restrict competition in this sector, despite the improvements in market access seen in some segments of the market in the past three years. The Administration plans to issue its next monitoring report in the Spring, 1999.

The United States also sought Japan's cooperation through the Asia-Pacific Economic Cooperation Forum (APEC) to open trade in specific sectors. The APEC members, including Japan, agreed in Kuala Lumpur in November 1998 to build consensus on the sector liberalization initiative begun in the APEC forum. Japan agreed to work constructively in the WTO to reach agreement on accelerated tariff reductions in eight sectors in 1999 including chemicals, energy equipment and services, environmental goods and services, fish and fishery products, gems and jewelry, medical and scientific instruments, toys and fish products. Such a significant package of tariff reductions will send a valuable message of confidence to markets at a critical time and meaningful participation by Japan, particularly in the fishery and forestry products sectors, will be essential to success. Finally, the United States will continue to seek further opening of the Japanese market through ongoing WTO negotiations, as well as upcoming trade negotiations.

U.S.-Japan Enhanced Initiative: Japan and Deregulation

Japan's recent government deregulation efforts notwithstanding, the Japanese economy remains burdened by excessive and unneeded regulations. Japanese economists estimate that the Japanese Government regulates about 40 percent of all economic activity in Japan. Excessive over-regulation in Japan in areas such as price controls, burdensome testing and certification requirements and unconventional standards restrain economic growth and raise the cost of doing business in Japan, lower the standard of living for Japanese consumers, and impede imports. The Japanese Government estimates that if its deregulation plans are fully implemented, Japan's GDP would grow by an added 0.9 percent annually during the JFY 1998-2003 time period, while the ratio of Japan's current account surplus to its GDP would decline by 0.9 percent.

Government over-regulation lies at the heart of many market access problems faced by U.S. companies doing business in Japan. Some regulations are aimed squarely at imports; others are part of a system, which protects the status quo against new market entrants, both foreign and Japanese. The United States has aggressively pushed for the elimination of regulations that impede market access for U.S. firms, and many recent U.S.-Japan trade agreements have addressed issues related to the regulation of Japan's markets.

Since 1995, the Japanese Government has undertaken a series of deregulatory measures, the latest being a three-year program for the promotion of deregulation decided by the Cabinet on March 31, 1998, which will continue through March 2001. To encourage Japan to adopt meaningful commitments to deregulate, the United States and other trading partners have provided Japan with annual submissions that describe specific deregulation recommendations. To date, progress under the deregulation plans has been modest.

In February 1998, the Hashimoto Government established a 12-person Deregulation Committee. This committee, which compiled the second Deregulation Action Plan, oversees implementation of the measures contained in that Plan. The Deregulation Committee is subordinate to the Japanese Government's Administrative Reform Promotion Headquarters, chaired by Prime Minister Obuchi. While the life span of the Deregulation Committee has not yet been defined, it is expected to continue through the duration of the Second Deregulation Action Plan. Because the powers of the Deregulation Committee are limited, (e.g., the Committee does not have the authority to compel Japanese ministries and agencies to adopt its recommendations), the United States has urged that a new and stronger entity be created within the Prime Minister's Office which could compel regulatory ministries and agencies in Japan to implement new deregulation measures and monitor those measures already announced.

The Enhanced Initiative on Deregulation and Competition Policy

To promote the goals of the Framework Agreement, accelerate the pace of deregulation in Japan, and increase market access for foreign goods and services, on June 19, 1997, President Clinton and then- Prime Minister Hashimoto established the Enhanced Initiative on Deregulation and Competition Policy ("Enhanced Initiative"). The Enhanced Initiative addresses sectoral and structural issues, and seeks the reform of government laws, administrative guidance, and regulations which impede market access for competitive foreign goods and services. Under the aegis of the Enhanced Initiative, six expert-level groups have conducted several rounds of meetings: five sectoral groups covering telecommunications, housing, medical devices and pharmaceutical products, financial services, and energy; and one group addressing various structural issues, including competition policy legal services, distribution, and transparency and other government practices.

During the Enhanced Initiative's first year, significant progress was made in breaking down a number of Japan's regulatory barriers. In the First Joint Status Report under the Enhanced Initiative issued in Birmingham, England in May 1998 ("First Joint Status Report"), Japan agreed to a number of important regulatory reform measures, including decisions to:

- implement a long-run incremental cost methodology (LRIC) to reduce the interconnection rates that telecommunications carriers must pay to connect to Japan's local telecommunications network;

- cut the approval period for new drugs from 18 months to 12 months by April 2000, and to greatly expand the acceptance of foreign clinical data in its approval of new medical devices and pharmaceuticals;

- enact several financial services-related measures under the "Big Bang" initiative, including the liberalization of derivatives trading, easing the registration process for new securities companies, and a sharp expansion in the scope of financial activities and products that banks and securities companies can undertake;

- abolish the Large Scale Retail Store Law and introduce a new legal regime that eliminates the use of supply/demand adjustment mechanisms;

- introduce legislation to abolish or reform the exemption systems for the Antimonopoly Act; and

- simplify and accelerate the application process for licenses and permits needed to do business in Japan.

In October 1998, the United States provided the Japanese Government its "Submission by the Government of the United States to the Government of Japan regarding Deregulation, Competition Policy, and Transparency and other Government Practices in Japan." This was a detailed description of deregulation measures the United States is seeking in all of the sectoral and structural areas during the second year of the Enhanced Initiative.

Senior-level meetings to discuss the Enhanced Initiative's work during its second year were chaired by the Deputy U.S. Trade Representative and Japan's Deputy Foreign Minister in November 1998 in Washington and in March 1999 in Tokyo. Both Governments aim to issue a Second Joint Status Report of substantive new market-opening measures to deregulate Japan's economy in the Spring of 1999.

SECTORAL DEREGULATION

Telecommunications

Under the Enhanced Initiative, the United States seeks regulatory changes to promote competition in the telecommunications sector. This sector has long been encumbered by excessive, outdated regulations and controlled by two dominant carriers, (*Nippon* Telegraph and Telephone Corporation (NTT), and *Kokusai Denshin Denwa* (KDD)), that exercise market power to deter the entry and development of new competitors. Both the United States' 1997 and 1998 submissions target excessive regulations and inadequate safeguards against anti-competitive activities in basic telecommunications, direct-to-home (DTH) satellite service, wireless equipment, cable television, and power main signaling. The United States has focused particular attention on those areas where U.S. firms have demonstrated strengths and where existing and potential investment stand to bring much-needed growth to this sector through innovative, competitively priced services. Since the Japanese telecommunications and broadcasting services market is worth an estimated $128 billion per year (and has the potential to expand significantly), a more open and accessible Japanese telecommunications market translates into increased opportunities for U.S. service and equipment exporters.

In recognition of a number of significant improvements identified in the First Joint Status Report, Japan has made some progress in addressing several areas of concern to the United States. Notably, Japan agreed to (1) introduce a pro-competitive methodology for setting interconnection rates in 2000 and promote the reduction of interim interconnection rates; (2) allow direct-to-home satellite service providers to offer a significantly expanded number of channels; (3) liberalize rules to allow international telecommunications service providers to use leased lines to bypass the over-priced international settlement system and bring international rates in line with those of competitive markets; (4) eliminate the restrictions on foreign investment in its major international carrier, KDD; (5) remove the restrictions on using third parties for transit of international telecommunications traffic; (6) complete a study by the end of 1998 on rights-of-way with the aim of improving access to these scarce resources; (7) reduce fees and simplify procedures for testing and certifying wireless equipment; and (8) consider eliminating foreign investment restrictions in Cable TV businesses.

These actions and commitments, which the United States is continuing to monitor closely, should help address important market access issues. Nevertheless, ensuring credible competition, especially in the local telecommunications markets, will require Japan to demonstrate more firmly that it can act as an independent regulator more attuned to providing equitable opportunities to new entrants and less biased towards the financial interests of an operator still majority owned by the Japanese Government.

Japan's failure to take necessary steps to enhance competition has resulted in new entrants having to endure expensive and slow roll-outs of new networks. In providing local service, for example, new entrants must traverse a maze of obscure market practices and non-transparent regulations that inhibit access to all but the most patient, determined, and highly capitalized firms. These impediments ultimately serve to protect inefficient incumbents from effective competition, unnecessarily increase the cost of establishing such a network, thereby slowing the delivery of benefits to consumers.

On another front, interconnection rates, which total as much as five times the level of rates in competitive markets, also place enormous burdens on new market entrants. In addition, the inability to use transit arrangements (or a "clearinghouse") to reach the dozens operators in Japan means that new entrants must devote valuable resources to negotiating individual agreements with operators or forego offering connectivity to their customers. Further, the lack of effective rights-of-way rules raises costs, slows network build-out, and prevents new entrants and consumers from deriving the benefits of more efficient network architectures. Finally, MPT's refusal to permit new entrants to rely on leased capacity until they can build out their own networks clinches the incumbent's grip on new entrants' cost structures by forcing them to rely broadly on above-cost interconnection.

To address these and other concerns, the United States has urged Japan to (1) lower interconnection rates for FY 1998 below the level proposed by NTT; (2) establish regulations requiring transparent, non-discriminatory, timely and cost-based access to rights-of-way needed to construct telecommunications networks; (3) remove restrictions on carriers wishing to use leased or owned lines to operate their networks; (4) establish a system of dominant carrier regulation to effectively regulate carriers with market power while liberalizing rules for non-dominant carriers; (5) develop a fair system which allows customers to access different carriers' services; (6) eliminate the need to negotiate dozens of interconnection agreements before service can begin; and (7) eliminate restrictions placed on the use of new technologies which employ power mains to transmit communications signals for a range of innovative automation and control services, which are widely employed in the United States and Europe.

Because several of these issues, notably interconnection costing and the use of leased capacity, relate to Japan's WTO commitments, failure to adequately address these issues raises concerns.

Medical Devices and Pharmaceutical Products

Under the 1986 Market-Oriented, Sector-Selective (MOSS) Medical and Pharmaceutical agreement, the U.S. Department of Commerce (DOC) and Japan's Ministry of Health and Welfare (MHW) co-chair a process which addresses regulatory and market access concerns. The MOSS Med/Pharm working group now also serves as the venue for discussion of medical and pharmaceutical issues under the Enhanced Initiative. As Japan undertakes potentially extensive health care reforms, price reimbursement and regulatory issues remain the focus of bilateral consultations. The United States and Japan held consultations on Japanese deregulation of medical devices and pharmaceutical products in March and October 1998 and in January 1999. Each of these consultations addressed Japan's implementation of its undertakings under the Enhanced Initiative, as well as additional measures designed to improve Japan's regulatory and reimbursement structures.

With regard to regulatory reform, the United States remains concerned that Japan's approval processes for medical devices and pharmaceuticals lag behind those of other industrialized countries. Such delays impose unnecessary cost burdens on both U.S. manufacturers and the Japanese health care system. Under the Enhanced Initiative, Japan has agreed to expedite its regulatory approval for new drugs by reducing the application review process from 18 months to 12 months by April 2000. This measure will allow the introduction of new medicines in Japan on a more timely basis, a benefit to both Japanese consumers and U.S. manufacturers alike. The United States is closely monitoring Japan's implementation of this undertaking and is pressing Japan to take specific interim measures to improve the new drug application approval process. In addition, the United States is pursuing improvements in the medical device approval system.

Japan's longstanding practice of limiting the acceptance of foreign clinical data for pharmaceutical and medical device approvals imposes unnecessary and unwarranted time and resource burdens on U.S. firms by requiring them to conduct duplicative clinical trials in Japan. Under the Enhanced Initiative, Japan has agreed to greatly expand the acceptance of foreign clinical data in the approval of new medical devices and pharmaceuticals. This Japanese measure will significantly reduce the time and expense U.S. firms must devote to new product testing and approval. The United States welcomes Japan's August 1998 adoption of International Conference on Harmonization Guidelines and is monitoring the implementation of this undertaking. The United States is also pursuing additional measures designed to broaden Japan's acceptance of foreign clinical data in the reimbursement process for medical devices to prevent delays that are caused by calls for domestic data.

In addition to regulatory barriers, the United States is addressing specific trade issues associated with Japan's current reimbursement system and longstanding practice of revising prices for medical devices and pharmaceuticals. The United States is concerned that Japan's reimbursement system lacks full transparency. Under Japan's national health care insurance system, reimbursement prices for drugs and devices do not always appropriately reward the true benefits of innovative products, and prices are frequently determined and revised based on a non-transparent, seemingly arbitrary basis.

Most U.S. manufactured medical devices on the Japanese market fall under the "by-function" pricing system, which assigns a newly introduced product to a reimbursement category of like products and prices it as other products already on the market. Under this system however improved medical devices that offer superior abilities and functions are often subject to artificially low reimbursement prices due to the fact that reimbursements are calculated according to outdated and/or inaccurate "by-function" categories. Under the Enhanced Initiative, Japan has agreed to work with industry to develop, as soon as possible, streamlined and transparent procedures for the creation of new functional categories. Although progress has been slow, the United States continues to press Japan to ensure that other changes in the by-function system do not take place before the adoption of guidelines to create new categories occurs.

In formulating its health care reforms, Japan has agreed to formally recognize the value of innovation, so that innovative products can be introduced promptly in Japan. Pursuant to this undertaking, the United States has urged Japan to adopt a market-based pricing system for pharmaceuticals that will not impede or prevent the introduction of innovative pharmaceuticals in Japan. The United States strongly opposes Japan's reference pricing proposal because such a system threatens drug innovation worldwide and prevents the introduction of innovative drugs in Japan, negatively affecting Japan's health care system and patient welfare.

Lack of access to decision-making processes and lack of transparency in the way that decisions are made have been longstanding problems in Japan that cut across all economic sectors; the medical device and pharmaceutical sectors are not exceptions. Under the Enhanced Initiative, Japan has agreed to ensure transparency in the consideration of health care policies by allowing foreign pharmaceutical and medical device manufacturers meaningful opportunities to state their opinions in the relevant councils on an equal basis with Japanese manufacturers. Japan has also agreed to provide foreign pharmaceutical and medical device manufacturers, upon their request, with opportunities to exchange views with MHW officials at all levels. The United States is monitoring the implementation of this undertaking and is encouraging Japan to carefully consider input provided by U.S. industry and to incorporate such input into Japan's final plans.

Lastly, the United States has been pressing Japan to address the structural problems underlying Japan's health care system, such as lack of volume buying and inadequate hospital specialization, that prevent efficient care delivery, substantially increase costs, and impede the timely introduction of new, innovative, and life-saving medical devices and pharmaceuticals. The United States continues to stress that cutting costs and improving the health care system in Japan will require the elimination of inefficiencies as well as the increased accessability and use of competitive foreign medical and pharmaceutical products.

Housing

Under the Enhanced Initiative, the United States and Japan established a Housing Experts Group. Consistent with the 1990 U.S.-Japan Wood Products agreement, the group promotes improved market access in Japan for foreign suppliers of wood and building products. At the same time, its work supports the objectives of several Japanese Government initiatives, including the March 1996 Deregulation Action Program, which envisages a one-third reduction in Japan's housing costs by the year 2000, and Prime Minister Obuchi's Living Space Initiative, which seeks to bring the living space of the average Japanese citizen up to European levels. Improved market access for wood and other building products and reliance on performance-based standards will lead to increased opportunities for American exporters as well as higher quality, safer, and more affordable housing in Japan.

The Housing Experts Group met twice in 1998 and again in February 1999. Its efforts have led to several significant changes, including: the development of a performance-based standard for 2x4 construction, as well as testing methods and procedures for implementation; recognition of U.S. grademarked-lumber for use in 2x4 construction in Japan; the lifting of the ban on construction of three-story, multi-family wood-frame housing; and reform of the Building Standards Law (BSL) so that it emphasizes performance-based, rather than prescriptive, standards. Before the downturn in the housing market, U.S. industry had estimated that these changes could expand the market for U.S. wood products in Japan by $500 million annually by the end of the decade. Unfortunately, progress on implementation has been slow, but the United States continues to monitor the sector to ensure that Japan abides by its commitments.

Another long-standing U.S. objective in Japan has been the elimination of tariffs on value-added wood products. At the November 1998 APEC Summit, APEC economies, including Japan, agreed to:
(1) participate in WTO negotiations on the tariff elements of the sectoral initiatives developed by APEC, including forest products (which covers wood, paper, printed materials and wood furniture); and (2) seek conclusion of a WTO Agreement in 1999, which would lead to the phase-out of tariffs for wood products by 2004.

Financial Services

In an effort to address barriers to foreign financial services providers in Japan, the United States and Japan concluded a comprehensive financial services agreement, "Measures by the Government of Japan and the Government of the United States Regarding Financial Services," in February 1995. This agreement features an extensive package of market-opening actions in the key areas of asset management, corporate securities, and cross-boarder financial transactions. Since the agreement was signed, Japan has implemented the vast majority of the commitments made within specified time frames and in some instances, Japan has accelerated the timetable for implementation.

Building on the progress from the 1995 Agreement, in November 1996 then-Prime Minister Hashimoto announced the “Big Bang” initiative to carry out broad-based deregulation of Japan's financial sector, in order to make Tokyo's financial markets comparable to those of New York and London by 2001. This financial reform plan involves major changes, such as allowing mutual entry across financial sectors; liberalization of brokerage commissions and foreign exchange transactions; tightened disclosure rules; and further liberalization of asset management regulations. Despite increased concern about financial sector stability in Japan in late 1997 following several prominent financial bankruptcies, the Japanese Government has thus far adhered to its reform schedule, with few exceptions.

In April 1998, a new Foreign Exchange Law went into effect which greatly facilitates access to foreign exchange and allows a much broader range of participants (in addition to banks) to conduct foreign exchange business. Further, in December 1998, a comprehensive omnibus law took effect that revised 22 laws to reform Japan’s securities, banking, asset management, and insurance markets, as well as accounting and disclosure standards. Main features of the legislation include changing from a licensing to a registration system for new securities companies, expanding the market for investment trusts by allowing sales through banks and other changes, and introducing several new securities products, such as over-the-counter equity derivatives.

The past few years have seen changes in the Japanese financial sector. The traditional segmentation which exists among various types of financial institutions is gradually being phased out, and many features of market over-regulation are being addressed. These changes have resulted in expanded opportunities for foreign financial firms in Japan. Despite this progress, however, a number of concerns remain. Although the Ministry of Finance formally eliminated the use of administrative guidance in June 1998, the lack of transparency in rule making continues to be a problem. Other restrictions hindering the emergence of a fully competitive market for financial services in Japan include inadequate disclosure, the use of a positive list to define a security, and lengthy processing of applications for new products.

The United States Government is currently monitoring the 1995 agreement and Japan's progress under the "Big Bang" initiative to ensure that implementation remains on schedule. Japan also signed the WTO Financial Services Agreement in December 1997, thereby binding itself to many of the liberalization measures of the bilateral agreement.

Energy

The United States and Japan agreed to establish a working group on energy under the Enhanced Initiative in May 1998. The United States views these discussions as a means of providing input to Japan's efforts to deregulate this sector, which will lower energy costs and help strengthen the Japanese economy. The United States is also seeking to ensure that the manner in which Japan deregulates results in a more open, transparent and competitive automotive market and that Japan eliminates specific market access barriers in this sector.

During the first meeting of the Energy Working Group under the Enhanced Initiative held in October 1998, the United States presented proposals for addressing specific regulations that impede the sale of U.S. equipment and services in the Japanese energy sector, including: (1) regulations for approval and inspection of energy-related equipment under the Electric Utilities Industry Law and High Pressure Gas Law; (2) regulations for increasing the capacity of existing power generating facilities; (3) requirements for certification and approval of stand-by generator sets; and (4) regulations governing the manufacture and installation of self-service gasoline pumps.

The United States urged Japan to streamline these regulations and certifications procedures; pressed Japan to accelerate its efforts to adopt performance-based regulations through greater utilization of voluntary, private-sector standards, where appropriate; to accept international-recognized test data and certifications; and to take additional steps to enhance the transparency of its rulemaking and standards development processes. In addition, we strongly urged Japan to strengthen its competition policy advocacy and enforcement in this sector.

During the first Working Group meeting, the U.S. and Japan also discussed developments in electric utility deregulation in their markets. In January 1999, the U.S. Government provided comments to Japan on its proposed electric utility deregulation plan. To enhance Japan's competitiveness, the Japanese Government has sought to reform the electric power industry and introduce measures to reduce electric power rates -- the highest in the industrialized world -- to international levels by 2001. Throughout 1998, a special "Basic Policy Committee" of the Electric Utilities Industry Council (EUIC) – a private sector advisory group to the Agency for Natural Resources and Energy (ANRE), and MITI, its parent ministry – met to discuss how to further liberalize the Japanese power market. The committee issued its final report in December 1998, which called for "partial liberalization" of the power market, with retail sale of electricity to be liberalized for large-scale users served by extra-high voltage networks (of 20,000 volts or higher), which account for approximately 30 per cent of total electricity consumption in Japan. In its comments, the U.S. Government expressed its view that the EUIC proposals would make only modest progress towards Japan's goal of achieving a significant lower energy costs.

During the second meeting of the Energy Working Group held in February 1999, the two sides discussed U.S. proposals for eliminating regulatory barriers to the Japanese energy market. Japan agreed to take concrete steps to address many of the U.S. concerns regarding standards, inspection and certification requirements, and other regulations covering the import of specific types of energy-related equipment, including turbines, compressors, gasoline pumps, and stand-by generator sets. Japan also agreed to liberalize regulations governing the expansion of existing power generation facilities. These steps will help encourage new entrants and additional investment in the Japanese energy sector and support Japan's efforts to lower energy prices. In addition, the two sides exchanged views on Japanese Government plans for electricity sector deregulation, as well as the ongoing restructuring of this sector in the United States, and agreed to continue this dialogue as deregulation proceeds. The United States also raised concerns about Japan's antitrust exemption for the electricity sector and urged the Japanese Government to eliminate this exemption. The United States will continue to press Japan to deregulate and eliminate market access barriers in the energy sector.

STRUCTURAL DEREGULATION

Antimonopoly Law and Competition Policy

Under the Enhanced Initiative, the United States has recommended a number of progressive measures which it believes will strengthen competition policy and lead to more effective enforcement of Japan's Antimonopoly Law (AML). Despite the 1996 "upgrade" of the Japan Fair Trade Commission's (JFTC) organizational status, the United States continues to believe that further strengthening of AML enforcement and competition policy in Japan is critical to improving market access. Foreign companies continue to face numerous impediments in accessing Japan's distribution channels across a wide range of sectors, including the automotive, paper and paperboard, flat glass, and photographic film and paper markets. Since October 1998, the Administration has focused particular attention on achieving genuine progress in the following AML and competition policy-related issues under the Enhanced Initiative:

JFTC Competition Policy Advocacy: Successful regulatory reform in Japan must be built on a solid foundation of effective competition policy. As the only Japanese agency charged with promoting competition, the JFTC should substantially boost its efforts as an advocate of competition policy and regulatory reform by championing removal of competition-blunting regulations. To this end, the United States has asked Japan to take several steps to enhance the JFTC's competition policy advocacy, such as establishing a Competition Policy Bureau to act as a strong advocate of competition and regulatory reform; introducing a Competition Policy Advocacy Plan; establishing a model JFTC Antimonopoly Law Compliance Manual and Program, which would be widely distributed to Japan's business community; and enabling the JFTC Chairman to regularly attend cabinet meetings. The United States has also requested that the JFTC strengthen its monitoring of private sector regulations or "*minmin kisei*" that may be used by industry and trade associations to restrict competition or market entry. To further enable the JFTC to participate in the regulatory process, the United States has proposed that the JFTC more actively exercise its existing statutory authority to hold hearings and comment on important deregulatory and competition policy issues. The United States has also urged Japan to amend the AML to allow the JFTC to provide its views to central and local government organs and committees, and review and comment on any proposed regulation to assess the regulation's competitive effect.

Private Remedies: Under Japanese law, there is absolutely no right for an injured party to bring an injunction against an alleged violator of the AML. Regarding private actions for money damages, since 1947 only eleven private actions for damages have been brought under the AML – this is due, in part, to the fact that the JFTC must first issue a formal recommendation against a firm before a private party can bring an action against the same firm. The United States strongly believes that the unfettered availability of injunctive relief and money damages to private litigants is an integral part of a comprehensive antimonopoly legal regime. In short, persons directly injured by anticompetitive behavior should be able to avail themselves of the AML if they choose to do so. Moreover, private AML enforcement can help alert Japanese firms to the importance of conforming their business practices to the AML, which in turn will keep markets free, open and competitive. A study group established by the Ministry of International Trade and Industry (MITI) issued a report in June 1998 that guardedly favored allowing private parties to bring injunction actions. Shortly thereafter, a JFTC advisory council began studying the question of private injunctive relief, as well as reform of the current system of private damage actions. In December 1998, the JFTC advisory body recommended in an interim report that it would be "appropriate" to allow private parties to bring injunction actions. The same JFTC advisory body will issue a report in 1999 addressing the issue of private damage actions. The United States welcomes these initiatives by MITI and the JFTC and strongly urges Japan to enact legislation that will lift the current restrictions on private injunctive relief and private action damages.

Anticartel Enforcement: Bid-rigging and collusive cartel activity continue to be serious problems in Japan. The United States has called for more aggressive enforcement actions to combat these activities and has urged Japan to increase the investigatory burden sharing between the JFTC and the Public Prosecutors Office; strengthen resources at the Ministry of Justice for criminal antimonopoly investigations; and boost JFTC and Ministry of Justice cooperation in criminal antimonopoly enforcement. In addition, the United States has proposed that an advisory council be established to examine methods of strengthening the JFTC's investigatory powers. To better combat bid-rigging, the United States has suggested that all bidders on public projects certify through a Certificate of Independent Pricing Determination that bid prices have been arrived at independently without any consultation, communication, or agreement for the purpose of restricting competition with any other bidder. To stiffen deterrence of criminal antimonopoly activity, the United States has proposed that criminal penalties for AML violations be strengthened significantly.

Distribution: A longstanding United States concern has been that business practices in Japan's distribution system have limited access of foreign suppliers to a number of sectors, including retailing, paper and paperboard, and flat glass. The United States has proposed that the JFTC establish a Retail Sector Competition Promotion Initiative to ensure that the recently enacted Large-Scale Retail Store Location Law not be used by local or prefectural government to unfairly limit the entry of large-scale retailers. Moreover, the United States requested the JFTC to initiate a follow-up survey to its 1993 paper industry survey, and finish by April 1999 an ongoing follow-up survey of the flat glass market. More broadly, the United States has asked the JFTC to consider surveying the extent and form of financial inter-relationships linking manufacturers and distributors in highly oligopolistic industries.

Antimonopoly Law Exemptions: The United States has urged that numerous exemptions to the AML either be abolished or substantially narrowed in scope, particularly those exemptions related to Depression and Rationalization Cartels. On February 16, 1999, the Japanese Cabinet announced its intention to introduce legislation to the Diet which will eliminate the exemptions for Depression Cartels, Rationalization Cartels, and other exemptions. Under the Enhanced Initiative, in May 1998, Japan agreed to submit legislation by March 1999 to implement these changes. The United States has also proposed that the JFTC amend the Premiums and Misrepresentations Law and Business Reform Law to ensure full application of the AML to Fair Trade Councils and firms subject to these two statutes, respectively.

JFTC Staffing & Resources: The United States has consistently urged since the Structural Impediments Initiative that the JFTC's budget and staff should be increased to ensure that it is able to carry out its mandate. The duties of the JFTC are increasing rapidly. For example, the abolition of numerous AML exemptions and stepped up deregulation now requires the JFTC to police more business behavior. Recognizing the importance of directing more resources and manpower to the JFTC, in 1996 a top MITI official stated that, "After deregulation is initiated, human resources should be shifted from regulatory bodies to competition authorities." The United States has recommended that the JFTC staff be increased by 25 persons annually over the next five years, the JFTC's budget be increased by 5% annually over the next five years, and the JFTC be exempted from the Japanese Government's rule requiring government organs to submit zero-growth budgets. The United States has also sought assurances from the Japanese Government that the JFTC's independence will not be compromised when it becomes part of the Ministry of General Affairs in 2001.

DISTRIBUTION

Japan's highly regulated, inefficient distribution system is widely recognized as a significant trade and investment barrier. Through the Enhanced Initiative's Working Group on Structural Issues, the United States has focused on laws, regulations, and practices that contribute to the abnormally high costs of distribution in Japan, such as slow customs processing, over-regulation of the trucking and warehouse industries, and excessive regulatory restrictions in the retail sector. In its October 1998 Deregulation submission, the United States requested the implementation of significant deregulation measures to address key distribution problems faced by foreign firms.

Regulation of Large Scale Retail Stores: The Large-Scale Retail Store Law has long been an obstacle to foreign investors and exporters, with its limitations on the establishment, expansion and business operations of large stores in Japan, which are most likely to handle imported products. By impeding the business operations of large stores, the Law reduced productivity in merchandise retailing, raised costs, discouraged new domestic capital investment and diminished the selection and quality of goods and services. It also acted to the detriment of Japanese consumers.

On May 8, 1998, the Japanese Diet passed legislation to abolish the Large-Scale Retail Store Law and replace it with the Large-Scale Retail Location Law (LSRSLL) on June 1, 2000. The new Law provides that regulation of large stores will no longer be based on supply/demand considerations, but upon the degree to which a large store opening or expansion affects the local environment, particularly traffic, noise, parking, and garbage removal. Japan also amended its City Planning Law in November 1998 to afford local authorities greater freedom in zoning decisions.

While the United States welcomed the abolition of the Large-Scale Retail Store Law, it has expressed strong reservations with regard to the new legislation. The manner in which the new LSRSLL and the revised City Planning Law are implemented will determine whether they are improvements over the Large-Scale Retail Store Law and afford greater market access for large stores. Accordingly, the United States expects MITI to fulfill its stated intention to apply public comment procedures to the draft environmental guidelines, ministerial ordinances, and other measures necessary to implement the new law.

However, the United States remains extremely concerned with the possibility for abuse or inconsistent application of the new authority by local governments. Accordingly, it has urged the Japanese Government to: (1) clearly and precisely formulate and make public all of the criteria and procedures that local governments will be allowed to use in considering the establishment or expansion of large-scale retail stores; (2) clearly and narrowly define the authority of local governments in exercising their new authority; (3) establish close and continuous central government monitoring of local governments' implementation of the new authority; (4) establish a central government monitoring and appeals mechanism that would allow retailers to obtain prompt review and redress of decisions by local authorities that unreasonably restrict the introduction or expansion of large-scale retail stores; and (5) ensure that local governments do not use recent amendments to the City Planning Law to impose unreasonable restrictions on the location of large retail stores. The United States has also urged the Japanese Government to ensure that the transition between the old and new systems is smooth and does not impede the opening or expansion of large stores or discourage retail investors from planning an orderly expansion of their business. The United States will continue to closely monitor the implementation of the new Law.

Transportation and Warehousing: Japanese laws limit competition and raise costs in the trucking business by, among other things, requiring new entrants to meet minimum number of vehicle requirements and imposing burdensome rate filing requirements on companies. The United States has asked Japan to (1) establish a generally available nationwide trucking operating license that would be used by international companies serving Japan wishing to engage in intermodal shipping operations; (2) remove any district licensing requirements for trucking services that specify a minimum number of vehicles; (3) eliminate pricing restrictions on freight forwarding; and (4) reduce significantly the restrictions on entry in the warehouse sector, including licensing and notification requirements, in order to reduce shortages of storage space, lower high fees, and minimize burdens for foreign firms in distributing their products.

Transparency and other Government Practices

Greater transparency and increased opportunities for public participation in Japan's regulatory system are essential complements to effective sectoral deregulation in Japan, and will lead to a more effective and accountable regulatory system. An improved regulatory environment would play an important role in reducing market access barriers faced by foreign firms in Japan.

Lack of Transparency in Regulatory System: Foreign firms are disadvantaged by the lack of transparency in the Japanese regulatory system. As a consequence, the United States has long pressed Japan to make its administrative procedures and practices more open and transparent. Under the Enhanced Initiative, the United States has raised specific concerns, including the following:

Lack of an Information Disclosure Law: Japan has not yet enacted an information disclosure law, comparable to the U.S. Freedom of Information Law, which would give foreign firms, as well as the Japanese public, access to records and other information under the control of governmental entities. A U.S. priority under the Enhanced Initiative has been the expeditious enactment and implementation of an information disclosure law to provide the public with effective access to government information. In March 1998, the Japanese Government submitted information disclosure legislation to the Diet, and on February 17, 1999, the Lower House passed the legislation. Although the United States has continued to urge Japan to subject public corporations (*tokushu hojin*) to information disclosure requirements, they are not covered by the pending legislation.

Development of a Rulemaking Process: Traditionally, ministries and agencies have prepared regulations in a "black box", that is, regulations have been created and adopted without interested parties being provided opportunity for notice and comment. Those limited opportunities for comment which have been afforded have generally been extended only to bureaucrats, former bureaucrats and special interest groups. Others with an interest in proposed regulations are generally denied an opportunity to take part in the process. Under a notice and comment process, all governmental entities would be required to publish proposed regulations, provide a reasonable opportunity for interested parties and the general public to comment on the proposed regulation, and give serious consideration to these comments in preparing the final regulation. In accordance with its 1998 Three-Year Deregulation Program and the First Joint Status Report under the Enhanced Initiative, the United States has set as a priority Japan's adoption of a notice and comment process that would enable all interested parties to participate effectively in the development of regulations. Japan is now preparing to introduce Public Comment Procedures.

In October 1998, Japan's Management and Coordination Agency (MCA) issued draft Public Comment Procedures, to be instituted in April 1999. The United States submitted, on December 10, 1998, extensive comments, in which it commended the MCA for using a transparent process in preparing the Procedures, and urged it to remedy potentially fatal flaws in the proposal. In particular, the United States objects to the extensive discretion afforded administrative agencies in deciding when to apply such procedures. In addition, the United States urged Japan to (1) require all ministries and agencies to use the procedures for all regulations that they propose to adopt, modify or abolish, as well as legislative proposals that they propose, unless they meet narrowly defined exceptions, (2) require all advisory councils, including *shingikai*, *kenkyukai*, *benkyokai* and *kondankai* to use the Procedures when they issue interim reports and draft recommendations; and (3) establish an independent review mechanism designed to hold administrative agencies accountable for failing to comply with such procedures.

Use of Administrative Guidance: The lack of transparency inherent in Japan's excessive and extensive use of informal directives or "administrative guidance" remains a serious concern to the United States. Despite the 1994 Administrative Procedure Law's requirements that Japan provide, upon request, and in writing, a copy of administrative guidance to (1) a private party receiving oral guidance from the government or (2) when it is issued to multiple persons, a Management and Coordination Agency survey indicates that there have been few instances where this has occurred. The United States has called upon Japan to increase the transparency of the use of administrative guidance, including requiring government entities to incorporate into administrative guidance a statement that compliance with it is completely voluntary, and that the recipient will not be treated disadvantageously for not complying with the guidance.

Use of Advisory Councils: Japan often relies upon advisory councils (*shingikai, kenkyukai, benkyokai* and *kondankai)*, established by ministries and agencies, to formulate policies and recommendations. While the councils have the appearance of objectivity and independence from the bureaucracy, in fact their members typically include former bureaucrats; their secretariats are staffed by bureaucrats of the affected ministry; and they are implicitly expected to endorse policies developed or advocated by the ministry. Under the Enhanced Initiative, the United States has called upon Japan to improve the transparency and objectivity of such advisory councils, in particular, by affording notice and comment opportunities in the preparation of reports and recommendations. The Central Government Reform Law, which was enacted in 1998, also calls for reform of the advisory council process.

Need for Improvement of the Application Process: Despite provisions of the 1994 Administrative Procedure Law, which were designed to standardize administrative procedures, and make them more transparent and fair, U.S. firms have repeatedly complained about the burdensome and unpredictable nature of the application process in Japan. Potential applicants for licenses, permits and other approvals often must engage in extensive "prior" consultations with governmental entities and satisfy numerous requests for additional information before they are allowed to submit their application to the relevant ministry. Such prior consultations may take six months to a year or more. Repeated requests for more information appear to arise because the standards, criteria and other requirements used to evaluate an application often are not adequately set out in published regulations. Under the Enhanced Initiative, the United States has called upon Japan to remedy this situation.

IMPORT POLICIES

In the Uruguay Round, Japan agreed to "zero for zero" tariff eliminations on pharmaceuticals, paper and printed products, beer, whisky, and brandy, agricultural equipment, medical equipment, construction equipment, furniture, steel, and toys. Japan also adopted the chemical harmonization initiative. Japan cut tariffs on copper and aluminum, with the top rate reduced from 12.8 percent to 7.5 percent. Japan is one of the 43 signatories of the 1997 Information Technology Agreement, which eliminates tariffs on the overwhelming majority of covered products by 2000. Japan's remaining high tariffs affect primarily agricultural and food products, including white distilled spirits, processed food products, wood and wood products, and leather and leather products. Tariffs on white distilled spirits will be eliminated as a result of the December 1997 settlement of a WTO dispute.

Japan

At the APEC Leaders' meeting in Vancouver, Canada in November 1997, the United States, Japan and 16 other APEC economies endorsed a program of accelerated trade liberalization measures (the Early Voluntary Sectoral Liberalization -- EVSL – initiative) in nine sectors: environmental goods and services, the energy sector, fish and fish products, toys, forest products, gems and jewelry, medical equipment and instruments, chemicals, and a telecommunications mutual recognition agreement. As the world's second largest economy, Japan's full participation in these initiatives was regarded as vital to ensuring their successful completion in 1998 as directed by APEC Leaders. Facing strong domestic pressure, Japan refused to participate in tariff reductions in the fisheries and forestry products sectors at the November 1998 APEC Leaders' Meeting, thereby blocking APEC's adoption of the policy package. However, it committed with other APEC nations to negotiate tariff reductions in all of the EVSL sectors in the WTO. The United States will press Japan to play a constructive role in concluding agreement at the WTO on this initiative in 1999.

Distilled Spirits

In July 1996, a WTO Dispute Settlement Panel ruled against Japan in proceedings initiated by the United States, Canada, and the European Union. The panel found that Japan's liquor tax regime discriminated against imported distilled spirits and was therefore inconsistent with Japan's WTO obligations. Unfortunately, the United States was forced to seek binding arbitration when it became apparent that Japan did not intend to bring its tax system into WTO compliance within a "reasonable period" as provided for under WTO rules. The arbitration ruling in February 1997 supported the position of the United States. After considerable negotiation, in December 1997 the United States and Japan reached a settlement ensuring that Japan would bring its liquor taxation system into WTO conformity. Furthermore, Japan also agreed to eliminate tariffs on all brown spirits (including whisky and brandy) and on vodka, rum, liqueurs, and gin by April 1, 2002.

Specifically, Japan is revising its liquor excise tax system in three stages: October 1, 1997; May 1, 1998; and October 1, 2000. Taxation rates for all distilled spirits were brought into WTO conformity by May 1998, with the exception of low-grade shochu. On May 1, 1998, the liquor tax for imported whiskey and brandy was reduced by 58 percent, while the tax on high-grade shochu was raised by 59%. The tax on low-grade shochu will be harmonized on October 1, 2000.

The U.S. distilled spirits industry reports that, as expected, the change in taxation has had a significant positive impact on exports of U.S. distilled spirits to Japan. In 1998, total exports of U.S. spirits to Japan increased by 23% over 1997 and grew faster than exports to other markets. The increase in U.S. distilled spirits exports is even more striking in light of Japan's current economic recession which has caused significant declines in overall U.S. exports to Japan.

The United States will continue to closely monitor Japan's implementation of this settlement to ensure that tax and tariff reductions are eliminated on the schedule agreed, and that no measures are adopted which would undermined the benefits of this settlement.

Varietal Testing

Japan restricts entry of certain U.S. fresh fruits, vegetables and other horticultural products, and many other products continue to face outright bans. Despite bilateral technical discussions over many years, there has been no progress in liberalization of products such as cabbage and fresh whole potatoes, which Japan continues to prohibit without sufficient scientific evidence of legitimate plant quarantine concern.

U.S. agricultural products such as apples, cherries, walnuts and nectarines, continue to be subject to unnecessary phystosanitary restrictions. Japan requires repeated testing of established quarantine treatments each time a new variety of an already-approved commodity is presented for export from the United States.

After efforts to resolve the varietal testing issue through bilateral negotiations over many years proved unsuccessful, in October 1997, the United States invoked dispute settlement procedures against Japan's varietal testing requirements. This redundant requirement has no scientific basis and, because it imposes expensive and time-consuming testing on American producers, serves as a significant barrier to market access.

The United States challenged these requirements as inconsistent with Japan's obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement"). On October 27, 1998, a WTO dispute panel ruled in favor of the United States. The central panel findings were that Japan's varietal testing requirement is maintained without sufficient scientific evidence, in violation of the SPS Agreement Article 2.2, and inconsistent with Japan's transparency obligations under SPS Article 7 and Annex B, since Japan has not published its requirements. Both parties appealed the decision and, in February 1999, the Appellate Body affirmed this ruling and expanded product coverage of the initial panel report through a finding that Japan's requirement is not based on a risk assessment, in violation of Article 5.1. The additional products covered by this finding included: plums, pears, apricots and quinces. The Appellate Body report should result in new market opportunities for U.S. producers of these crops.

Fumigation Policies

Also of major concern is the lack of transparency in Japan's fumigation policies. Japanese plant quarantine regulations require fumigation of imported fresh horticultural products if, upon import inspection, a shipment is found to be infested with live insects regardless of whether these are considered serious plant pests or are already present in Japan. The fumigation requirement is particularly detrimental to trade in delicate horticultural products, such as lettuce and cut flowers, which generally do not survive the treatment and must be destroyed. In fact, Japanese produce importers report that if the risk of fumigation were eliminated, imports of U.S. lettuce would grow dramatically, to more than $100 million annually. Due to the high risk of product loss due to fumigation, sales now typically average less than $5 million per year.

After repeated requests by foreign governments for reform, MAFF has begun to implement a non-quarantine pest list by partially amending the Plant Quarantine Law to exempt 53 pests and 10 plant diseases from fumigation requirements. While this appears to be an important positive step, the list does not include common insects found on U.S. fresh fruits and vegetables. The United States will continue to press Japan in appropriate technical and deregulatory fora to develop a comprehensive list of non-quarantine pests and transparent inspection procedures in an effort to reduce excessive, unnecessary, and trade distorting fumigation.

Tomatoes-Tobacco Blue Mold

The United States remains concerned that Japan continues to restrict market access of tomatoes to all but a limited number of varieties due to its unsubstantiated concern that such tomatoes may carry tobacco blue mold. Japan's original concern was based upon a scientific citation dating from the 1940s that claimed tobacco blue mold disease might be carried on tomatoes. The scientific literature since then contains numerous citations that refute the original claim, yet Japan continues to rely upon it, clinging to the notion that tomatoes shown to be resistant or immune to the disease may be so owing merely to varietal differences.

In June 1998, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) sent MAFF a letter outlining the U.S. scientific position on this issue. At a bilateral meeting between technical representatives from both countries in September 1998, the U.S. requested that MAFF hold a public meeting to authorize the importation of all varieties of U.S. tomatoes, since there is no scientific evidence that U.S. tomatoes are capable of transmitting tobacco blue mold to Japan. MAFF responded in December 1998 by stating that there is no scientific evidence that field grown tomato fruit are a host of tobacco blue mold. While this is a welcome recognition, MAFF also indicated that it will need to study some related technical issues further.

While representatives of MAFF have indicated informally that the scientific questions have been answered and enough data have been provided to address this issue, this issue remains politically sensitive in Japan due to strong agricultural interests. It is the position of the United States that the February 1999 WTO Appellate Body decision (upholding earlier WTO dispute settlement panel findings) that Japan's variety-by-variety quarantine testing requirements are scientifically unjustified, should finally settle this issue. The United States pressed these concerns at senior levels in 1998, and will continue to do so in 1999.

Fish Products

Japan maintains nine global and two bilateral import quotas on fish products. U.S. fishery exports to Japan subject to import quotas (IQ) include pollock *tsurimi*, pollock roe, herring, cod, mackerel, whiting, squid, and several other fish products. These quota-controlled imports into Japan account for sales of hundreds of millions of dollars annually.

In 1998, Japan made substantial changes to the administration of the IQ system by the Ministry of International Trade and Industry (MITI), which improved information disclosure and transparency, by (1) making IQ allocations once a year instead of twice annually as in the past; (2) making allocations for each fish species at the same time each year; (3) announcing a breakdown of IQ amounts, by groups of recipients (such as processors, traders, fishermen, etc.); (4) providing the names and addresses of IQ recipients with their allocation amounts; and (5) disclosing, later, the actual amount imported by each IQ holder.

In administering the fish and shellfish IQ, which covers a number of species, MITI now provides a breakout for mackerel, jack mackerel and sardines by quantity rather than value. This information helps U.S. exporters plan their transactions by species.

The fisheries sector was identified as one of nine sectors for Early Voluntary Sectoral Liberalization (EVSL) under APEC. Fish exporting countries, including the United States, urged Japan to liberalize trade in fishery products through eliminating tariffs, facilitating investment, and promoting economic and technical cooperation. At the November 1998 APEC Leaders' Ministerial Meeting in Kuala Lumpur, Japan refused to participate in tariff cuts in the fisheries sector, arguing that such a policy would result in over fishing, devastate marine living resources and benefit flag-of-convenience vessels and non-members of regional fishery management organizations. However, at the Kuala Lumpur Meeting, Japan agreed to language in the Ministerial Declaration that commits it to participate in negotiations on the tariff elements of the sectoral initiatives developed by APEC in the WTO "with a view towards further improving....participation and endeavoring to conclude agreement in the WTO in 1999; and by working constructively to achieve critical mass in the WTO, necessary for concluding agreement in all 9 sectors." The United States will press Japan to play a constructive role in concluding an agreement at the WTO in 1999, with a view towards eliminating fisheries product tariffs in the 2002-2004 time frame.

General Food Products

In the Uruguay Round of the General Agreement on Tariffs & Trade, Japan agreed to bind tariffs on all agricultural products and to reduce bound rates by an average of 36 percent during 1995-2000, with a minimum 15 percent reduction on each tariff line. Japan also agreed to gradually reduce tariffs on imports of beef, pork, fresh oranges, cheese, confectionery, vegetable oils, and other items. Even after full implementation of the Uruguay Round cuts however, imports of many intermediate and consumer-oriented food and beverage products will still face relatively high tariffs, including beef, fresh oranges, fresh apples, citrus and other fruit juices, corn grits, confectionery, snack foods, ice cream, and processed tomato products.

Japan also agreed in the Uruguay Round to convert all import bans and quotas (except for rice) to tariffs, which would be reduced between 1995 and 2000. Tariff rate quotas replaced import quotas for wheat, barley, starches, peanuts, and dairy products. Japan retains state trading authority and price stabilization schemes for these products but is currently studying proposals to liberalize imports to a small degree. Imports of many packaged food items have been hampered due to high tariffs (22-24 percent *ad valorem* for confectionery products and 24 percent *ad valorem* for cookies and biscuits) Imports of wines also face 21 percent *ad valorem* duty.

The United States is closely monitoring Japan's implementation of the Uruguay Round measures for agriculture (particularly imports and exports of rice) and safeguard measures for beef and pork. Our bilateral efforts have also focused on countering any technical or food safety-related measures, such as product standards and labeling issues, that threaten to impede imports.

Import Clearance Procedures

Despite progress in recent years, Japanese import clearance procedures remain slow and cumbersome by industrial country standards, resulting in increased costs for both U.S. exporters and Japanese consumers alike.

Continuing U.S. and Japanese Government efforts to improve import clearance are being discussed under the Enhanced Initiative, as well as in regular bilateral consultations between customs agencies. These discussions have helped promote changes in Japan's import processing procedures including eliminating the requirement to process all air cargo through a separate cargo holding area (Baraki-cargo area 30 kilometers from Tokyo's

Narita airport); instituting a computerized customs processing system; integrating that computer system with inspection authorities from the Ministry of Health and Welfare and the Ministry of Agriculture, Forestry and Fisheries; and establishing a pre-arrival customs clearance procedure.

Although these changes have resulted in a reduction in the average time required for customs clearance, problems remain. Average processing times in Japan, for example, remain slow relative to other advanced industrial countries. A WTO secretariat review of Japanese customs procedures concluded that clearance times remain quite high by developed-country standards, apparently not because of official clearance procedures per se, but due to logistical issues such as pre-processing and warehousing. U.S. companies have endorsed the following four elements drafted by the World Customs Organization (WCO) to simplify and streamline customs processing: (1) releasing cargo on the provision of minimum information necessary to identify cargo and permit the completion of final customs declarations; (2) filing a single customs declaration for all imports in a given period where cargo is imported frequently by the same person or enterprise; (3) clearing cargo at declarants' premises or another authorized place; and (4) using importers' commercial records to self-assess duty and tax liability and to ensure compliance with other customs requirements. At the last WCO meeting in June 1998, Japan opposed making all four elements mandatory. The draft text was subsequently amended to make elements (1) and (3) mandatory with the other elements to be adopted "to the extent possible." The United States urges Japan to support the current text.

Moreover, the U.S. Government and U.S. companies urge Japan to permit private facilities to conduct the same bonded warehouse functions as currently exist at Tokyo's Narita airport, and to allow direct transfer to these facilities. These changes are needed in order to meet the greatly increased cargo volume expected after a second runway at Narita airport is completed in 2001.

In addition, user fees remain high. Importers complain that the Nippon Automated Cargo Clearance System (NACCS) is prohibitively expensive and difficult to use. Overtime processing charges are artificially high because a maximum number of shipments are allowed per hour, even though a much greater number of shipments could be cleared now since the system is automated. Warehouse charges are high because each shipment is charged a minimum of 80 hours of storage time, despite the fact that average processing time is only 31 hours. The *de minimis* value for exemption is also quite low at 10,000 yen (less than $100), significantly increasing the cost of importing relatively small value items. This also requires considerable processing time, and discourages orders from catalog retailers. Additionally, Japan is the only advanced industrial country to use a "cost, insurance, freight" (CIF) basis in calculating its duties, rather than a "free on board" (FOB) basis which increases costs.

Finally, customs processing hours of operation are short. A change, from 8:30 AM-5:00 PM to 6:00 AM-10:00 PM hours of operation every day, including Saturdays, Sundays, and holidays, would bring processing hours for cargo in line with processing hours for passenger baggage, greatly benefitting importers and facilitating onward transportation. U.S. companies have also requested that Japan establish procedures to effect customs release of cargo 24 hours per day by implementing a surety bond system, bank guarantee, or "round-the-clock" bank clerk.

Given the wide-ranging effect of customs clearance costs and delays on current and potential U.S. exporters, catalog retailers, courier services, and Japan-based enterprises which require the importation of goods and equipment, it is difficult to estimate the dollar effect of streamlining Japanese customs procedures. However, one U.S. courier has estimated that changing the *de minimis* exemption alone would reduce annual duties by tens of billions in yen, while encouraging dramatic increases in orders from Japanese consumers.

Leather

In 1991, Japan liberalized treatment of footwear imports, setting a footwear quota of 2.4 million pairs per year. By JFY 1998, it had raised that quota to roughly 12 million pairs per year. In the Uruguay Round, Japan committed itself to reduce tariffs over an eight-year period on under-quota imports of leather footwear, crust leather and other categories. The U.S. Government and U.S. leather and leather footwear industries continue to push for elimination of the quotas.

Above-quota imports of footwear still face stiff barriers. The above-quota tariff is currently 48.8 percent or 4,612.50 yen per pair, whichever is higher. These rates will drop to 30 percent or 4,300 yen, whichever is higher, by 2002. In principle, the over-quota tariff rate will be reduced by 50 percent and the yen minimum alternative rate by 10 percent over the eight-year phase-in period. In practice, however, the yen minimum alternative rate is applied in a manner that negates the effect of the larger tariff rate reduction. Moreover, while above-quota imports grew substantially in JFY 1996, they still totaled only about 7.7 percent of under-quota imports. This suggests that the higher rates for above-quota imports are discouraging additional imports.

Rice

Japan's highly protected rice market has long been a target for liberalization efforts. During the GATT Uruguay Round, Japan agreed to begin to open its domestic rice market and establish a minimum access commitment for rice imports. Under this agreement, Japan committed to import 379,000 metric tons in 1995/1996. This quota was to grow to just over 758,000 tons at the end of the Uruguay Round implementation period (2000/2001). Since the Uruguay Round, the United States has been the single largest foreign supplier of rice to the Japanese market, supplying approximately one-half of Japan's total imports.

In December 1998, Japan notified the WTO of its intention to convert Japan's current minimum access commitment for imported rice to a tariff-rate quota (TRQ). The shift to a TRQ, which is provided for in annex 5 to the Uruguay Round's Agriculture Agreement, would replace the current absolute quota. By switching to a TRQ, Japan will be allowed to slow the rate of growth of the minimum access commitment in the final two years of the Uruguay Round implementation period. Tariffication will result in a decrease of the minimum access commitment in 2000/2001 to 682,000 tons, a decline of about 76,000 tons of rice.

The U.S. rice industry has worked assiduously to meet the demands of the Japanese market. In cooperation with its Japanese customers, it has improved its production, handling, and milling techniques for the unique varieties that are produced specifically for the Japanese market. In light of these impressive efforts, the United States held a number of discussions with the Japanese Government in the wake of its WTO notification to examine the effects of its new policies on access to Japan's rice market. Through these talks, the U.S. Government made it clear that it expects the U.S. rice industry to achieve continued access to Japan's rice market in line with that of the past four years. It will work with Japan in 1999 and beyond to that end, and will closely monitor Japan's rice purchases. If circumstances change, the United States reserves the right to consider all options to respond to this policy, including the WTO. At the same time, the United States and Japan plan to hold periodic consultations on a number of agricultural issues, including access to Japan's rice market. As a result of these discussions, the United States decided not to object to Japan's new rice import regime in the WTO at this time.

Japan

Wood Products/Housing

Japan is the United States's top export market for wood products. Japan's recession thus has taken its toll on U.S. exports of these goods. The slowdown caused a deep slump in its housing market, which in turn reduced demand for wood products. U.S. exports of forest products in 1998 totaled $1.6 billion, down 35 percent from 1997 levels. Reflecting Japan's sharp tariff escalation in this sector, U.S. exports of value-added wood products (from lumber to finished goods) fell even more sharply. The share of value-added goods in U.S. wood product exports to Japan fell from 34% in 1997 to only 25% in 1998.

There is much that the Japanese Government can do to restore and expand its wood products market. Among other things, it should take steps to rebuild consumer confidence, implement tax reform measures to stimulate home purchases, eliminate subsidies for its domestic wood products sector, and implement performance-based codes and standards under the revised Building Standards Law.

Japan has resisted the elimination of tariffs on wood product tariffs, a key U.S. objective. At the November 1998 APEC Leaders' Meeting, Japan refused to participate in tariff cuts in the forestry sector, but committed with other APEC nations to negotiate tariff reductions (in this and seven other sectors) in the WTO. The United States will press Japan to play a constructive role in concluding an agreement at the WTO in 1999, with a view towards eliminating wood product tariffs in the 2002-2004 time frame.

Housing has been designated as one of five priority sectors under the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy. It is described in further detail in that section.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Certification-related problems continue to obstruct access to Japan's markets. Although advances in technology continue to make Japanese standards outdated and restrictive, Japanese industry continues to support safety and other standards that are unique only to Japan and which restrict competition. In some areas, however, the Government of Japan has undertaken to simplify, harmonize, and eliminate restrictive standards in accordance with international practices.

The principal organization that adjudicates standards and certification disputes between foreign companies and the Government of Japan is the Office of the Trade and Investment Ombudsman (OTO). In 1994, the Office of the Trade and Investment Ombudsman came under the Prime Minister's office and was authorized to recommend actions to appropriate ministries. The Office of the Trade and Investment Ombudsman has had some modest impact, but still lacks formal enforcement authority.

Biotechnology

Japan has taken a scientific approach to regulating trade in agricultural biotechnology products made using genetically modified organisms (GMOs). To date, the Ministry of Agriculture, Forestry and Fisheries (MAFF) and the Ministry of Health and Welfare (MHW), which regulate biotechnology products, have approved the importation of 22 GMO varieties, including corn, potatoes, cotton, tomatoes, and soybeans.

While U.S. and Japanese regulatory approaches to biotech products have been closely aligned, MAFF has proposed new mandatory labeling requirements for GMOs that, if implemented, could significantly disrupt imports from the United States. The United States believes that labeling should convey essential ingredient and nutritional information and must be truthful, informative, and not mislead consumers. Requiring labeling when there is no health or safety risk discriminates against products produced through biotechnology and suggests a health risk where there is none. The United States expressed its concerns during MAFF's public comment period, and continues to urge the Japan not to proceed with unnecessary and inappropriate labeling requirements that could hinder the continued development of this important technology.

Dietary Supplements

Dietary supplements (vitamins, minerals, herbs, and non-active ingredients) have traditionally been classified as drugs in Japan, imposing severe restrictions in the Japanese market on the shape, dosage, and retail format for such supplements. These regulations create excessive costs and difficulties for most foreign supplement firms participating in the Japanese market, thus, contributing to the weak presence of U.S. firms. Dietary supplement issues are addressed by the United States through the MOSS/Enhanced Initiative process.

In March 1996, Japan's Office of Trade and Investment Ombudsman (OTO) recommended that products normally distributed and sold abroad as food products should not be regulated as drugs, but be allowed into the market as food products in Japan. However, since the release of these recommendations, MHW has significantly slowed the pace of such liberalization and has fallen far behind the schedule recommended by the OTO. The Ministry established study groups composed of government, industry, and academic experts to study each category of dietary supplements but the work of these study groups has become delayed. Ministry of Health and Welfare actions to date raise concerns that it will not accomplish the task set for it by the OTO. For example, the MHW identified in March 1997 seven vitamins to be treated as foods and six other vitamins to be treated as food only if sold in doses of less than 1.5 U.S. RDA. The basis for the Ministry's decision was unclear, as is the status of the vitamins which were not clearly treated as foods. The United States views the slow pace of this process, and unlikely prospects for timely reform, as a continuing concern.

In March 1997, the Ministry of Health and Welfare identified seven vitamins to be treated as foods and six other vitamins to fall between pharmaceutical and food regulations. The basis for the Ministry's decision was unclear, as is the status of the six vitamins which were not clearly treated as foods. A further concern arises from the fact that even those seven vitamins now treated as foods face insurmountable barriers when marketing in tablet form due to the fact that common excipients used to make such tablets do not appear on the positive list of food additives under Food Sanitation Law. Therefore vitamins containing these excipients still cannot be sold in Japan.

The treatment of dietary supplements as food products does not fully solve the marketing and labeling problems U.S. industry has faced in the past because as food products, dietary supplements must now adhere to the food additive restrictions of the Food Sanitation Law (FSL). Such is the case with sodium lauryl sulfate which is used in gel caps and is acceptable in medications, but is not part of the FSL's positive list for food additives. Another problem presented by the FSL is that some naturally occurring compounds, such as benzoic acid and sodium benzoic that is found in ginkgo biloba, are also considered food additives. Accordingly, such restrictions makes the marketing such products without major reformulations impossible.

The Administration will continue to engage MHW in the MOSS/Enhanced Initiative process, the OTO, and other fora, to improve market access for U.S. dietary supplements through full and meaningful implementation of the OTO recommendations.

Food Additives

Processed food imports into Japan often are obstructed by Japanese Government standards affecting food additives, even though those additives may be approved as safe in other countries by the Joint FAO/WHO

Experts Committee on Food Additives. Japan refuses to allow the importation of light mayonnaise (as well as creamy mustard) containing food additive potassium sorbate, a food additive widely recognized as safe, although many other food products containing this additive are permitted to enter Japan, including soy sauce.
Japan is revising its Food Sanitation Law to bring its processes for assessing food additives into conformity with the World Trade Organization (WTO) Sanitary and Phytosanitary (SPS) measures. Still, Japan's food additive regulations remain unusually restrictive, especially the listing of "non-natural" additives designated by the Ministry of Health, Education and Welfare (MHW) pursuant to Article 6 of the Food Sanitation Law. The U.S. Government encourages U.S. firms and industry associations to file applications with the MHW, allowing sufficient time for assessment. The United States has raised Japan's regulation of food additives in bilateral talks on deregulation and intends to continue to press this issue.

Pesticides Residues

The Ministry of Health and Welfare continues to establish new residue standards for pesticides, and to provide full notification to the WTO and the opportunity for comment and review. The U.S. Government is providing scientific data pertaining to relevant U.S. and international standards for the chemicals concerned.

While Japan has made progress in establishing pesticide residue standards in line with internationally recognized tolerance levels, further government action remains necessary to help counter misleading information regarding the safety of imported food and agricultural products.

Veterinary Drugs

The United States is also concerned by Japan's safety review process for veterinary drugs. Japan's practice of waiting for CODEX to adopt an international standard before evaluating scientific evidence results in unnecessary delays in establishing tolerance levels for veterinary drugs in Japan. Japan's policy of prohibiting detectable residue levels of these drugs, without conducting a risk assessment in a timely manner, appears to be inconsistent with Japan's obligations under the WTO SPS Agreement. The United States has urged Japan to undertake evaluation of scientific evidence in order to establish tolerance levels for new veterinary drugs in a timely fashion, and not to delay the process waiting for the outcome of CODEX deliberations.

GOVERNMENT PROCUREMENT

The U.S. Government has implemented bilateral agreements with Japan in six key sectors of the Japanese public sector market: computers, construction, medical technologies products and services, satellites, supercomputers, and telecommunications equipment and services. The aim of these agreements is to improve foreign firm's access to, and expand sales in, the Japanese public procurement market. In support of this, the agreements attempt to redress traditional Japanese procurement practices which have historically prevented U.S. and other foreign firms from fully and equally participating in the Japanese public sector market. In general, the agreements provide equal access for foreign and domestic suppliers to all public information at all phases of the procurement for upcoming procurements; ensure equal opportunity to comment on and participate in the development of specifications; provide for a reduction in the number of sole-sourced procurements; and require an impartial bid protest system. However, while there has been some notable progress made under the Medical Technology, Satellite, and NTT Agreements, results to date under several of the other bilateral government procurement agreements have been disappointing.

The United States continues to press Japan to make further efforts to expand opportunities for foreign companies in the Japanese public sector in order to achieve the joint aims of these important agreements. Further, in light of recent announcements by the Government of Japan that current and future supplementary spending packages will be focused on "21st Century Technologies" as well as traditional public works -- both areas covered by our bilateral Government Procurement Agreements -- comprehensive and effective implementation of these agreements at this time is essential.

Computers

U.S. makers of computer goods and services are global leaders in technology and performance and continue to be among the largest and most successful foreign firms in Japan. Because they have long been under-represented in the Japanese Government market for computers (where their share has been one third or less than their share of the larger, more competitive Japanese private sector market), the United States and Japan concluded the bilateral Computer Agreement in 1992. Under the agreement, the Japanese Government agreed to institute changes to its procurement practices with the aim of expanding government purchases of foreign computer products and services.

Regrettably, results from the agreement have been unsatisfactory and the United States is increasingly dismayed by the significant downward trend in Japan's public procurement of foreign goods and services in this sector. In fact, U.S. industry data indicate that foreign computer manufacturers' share of the Japanese Government personal computer market has declined steadily since the bilateral Computer Agreement was concluded in 1992. This share now stands at a mere 7.7 percent – down a striking 49 percent since 1992. Results under the agreement for mid-range and mainframe computers is only slightly better. Industry data show that while the foreign share of this market increased slightly from 1992 to 1994, it declined during the next two years, falling to 9.3 per cent of the market in 1996. This market share is barely above the 8.9 percent share foreign firms held in 1992. Even the Japanese Government, which has historically reported a higher foreign share of this market than U.S. company data indicates, reported a dramatic 37 percent drop (from 25.2 percent to 15.9 percent) in procurement from foreign sources between 1995 and 1996, leaving the current foreign market share roughly equivalent to the 15.5 percent foreign companies held when the agreement was implemented. These data compare unfavorably with a fairly consistent foreign market share of more than 30 percent of Japan's private sector computer market.

At the annual bilateral review of the agreement in Washington D.C. in August 1998, the United States expressed serious concern over the significant drop in the foreign share of the Japanese Government computer market and the fact that the joint aim of the agreement is not being achieved. The United States also noted continuing concerns about problematic procurement practices that the agreement was intended to stop, such as: (1) use of sole-sourcing of procurements by government agencies, particularly as related to important systems integration contracts; (2) unjust low-priced sales by Japanese manufacturers; and (3) unequal access to bidding information. We note that sole-sourcing by the Japanese Government, in this and other sectors, is actually increasing rather than decreasing as called for under the agreement.

In light of this situation, and taking into account technological advancements in the computer sector, the United States presented Japan with a series of proposals designed to enhance transparency and fairness in Japanese Government computer procurement to better enable us to achieve the joint aim of the Computer Agreement. The proposals, which are consistent with what Japan has already agreed to in other procurement agreements covering Medical Technology and Telecommunications, center on the broader adoption in Japan of the overall greatest value method (OGVM) bid evaluation system, which allows factors other than price to be taken into account in procurement decisions, as well as the provision of more information about upcoming procurements. The proposals are still under discussion.

Construction, Architecture and Engineering

The United States is seriously disappointed with the lack of progress under the U.S.-Japan public works agreements (the Major Projects Arrangement and the 1994 U.S.-Japan Public Works Agreement, which includes the Action Plan on Reform of the Bidding and Contracting Procedures for Public Works). Between the 1997 and 1998 annual bilateral reviews of these agreements, foreign design and construction firms won only $50 million in contracts. This is about half of the previous year's figure of $100 million and substantially less than one percent of Japan's $250 billion public works market. (The peak of U.S. participation in Japan's public works market was $300 million in 1989.) Although American companies have won a few contracts since the June 1998 review, including three out of five procurements awarded to U.S.-Japan teams for Central Japan International Airport, the United States remains very concerned by the low value of these contracts overall. If procurements remain at the current pace, foreign firms are unlikely to surpass last year's very low $50 million figure.

At the U.S. Government's request following the discouraging outcome of the 1998 annual review, the U.S. and Japanese Governments met for special interim consultations in January 1999. These consultations were focused on the two major areas for improvement highlighted during the 1998 review: (1) the very low number of design/consulting projects open to foreign firms, and (2) arbitrary restrictions on joint venture formation for large construction projects in Japan's public works market. No progress was made in relaxing joint venture requirements for construction projects. However, Japan's Ministry of Construction made two proposals in the design/consulting area, including allowing design/consulting firms greater freedom to partner on projects and combining design contracts in a way that could lead to more opportunities for foreign firms. Although the United States raised some concerns regarding the implementation of these initiatives, the United States considers them to be positive steps and will monitor developments closely to ensure these policy changes do, in fact, translate into greater opportunities for American companies.

The United States strongly urged Japan to take additional steps in both the design/consulting and construction areas that would lead to significant progress and more business opportunities for American companies before the next annual review (tentatively scheduled for July in Tokyo). The United States proposed that the 1999 annual review be held at the Under Secretary level because of the severe market barriers facing U.S. firms.

The United States is monitoring several major projects covered by the U.S.-Japan public works agreements, including the Central Japan International Airport, Kansai International Airport Second Runway Construction, New Kitakyushu International Airport, and the Kyushu University Relocation Project. Japan's public works market is expected to grow substantially over the coming year, largely through the implementation of various fiscal stimulus packages. During the January consultations, the U.S. Government highlighted a number of projects funded by such packages which are of particular interest to American companies, including several covered by the U.S.-Japan public works agreement.

Medical Technology

The United States and Japan concluded the Medical Technology Procurement Agreement in November 1994, with the goal of significantly increasing market access and sales of competitive foreign medical products and services in the Japanese public sector procurement market. U.S. firms are the world’s largest producers of advanced medical technologies and this agreement provides an important step forward in enabling U.S., as well as other foreign firms, to more effectively sell medical technology products and services in Japan's public sector.

The agreement sets out fair and transparent procedures that must be used by governmental entities in procuring major medical equipment and services. The agreement also contains a set of quantitative and qualitative criteria upon which its implementation may be annually assessed, including value and share of contracts awarded to foreign firms by each government entity; number and value of contracts awarded through single tendering; and foreign access to procurement information.

A key element of the agreement is the requirement that procurement decisions for central government purchases above a specified threshold (lowered to 385,000 Special Drawing Rights on April 1, 1998) be made on the basis of the overall greatest value method (OGVM) of bid evaluation, instead of lowest-bid. This is important because U.S. equipment is generally more innovative and offers special features or extraordinary performance and OGVM permits procurement decisions based not just on initial price, but on a complete assessment of the product's value over its life cycle. This ensures buyers the flexibility to select products based on the most favorable combination of price and performance.

Japanese central government entities use OGVM in selecting medical equipment valued above the established thresholds, and have reportedly found the methodology to be very effective in procuring the kinds of equipment they need to provide high quality medical care to their patients. Prefectural and municipal hospitals however have been obligated under Japanese law to exclusively utilize the "lowest-bid procedure" of evaluation, hindering the ability of U.S. companies to sell in this significant portion of the Japanese market. Under the agreement, Japan is required to encourage prefectural and local governments to utilize measures similar to those adopted by the central government entities.

In the March 31, 1998 Deregulation Action Plan announced by the Japanese Government, the Ministry of Home Affairs announced its intention to review local law and to undertake necessary measures to allow prefectural and local governments to use OGVM in bid evaluation. Accordingly, on February 17, 1999, the Cabinet adopted a Cabinet Order to permit the use of OGVM in bid evaluations undertaken by local and prefectural entities. This new policy should serve to expand market access in Japan for U.S. exporters and manufacturers of, not only highly advanced medical devices, but of all types of technologically advanced products. According to U.S. industry estimates, this measure could represent total U.S. sales increases in Japan of approximately $500 million ($100 million in medical devices.)

In 1995, the estimated foreign market share of government procurement covered by the Medical Technology Procurement Agreement totaled 38.6 percent. The foreign market share rose slightly in 1996 to 41.2 percent. Japanese public sector procurement addressed by the arrangement provisions topped 75 billion yen in 1996 -- or about $700 million. Preliminary data for calendar year 1997 indicate a slightly higher foreign company share.

The United States is satisfied to this point that Japan is fulfilling the objective of the Medical Technology Procurement Agreement to provide greater market access and sales in its government procurement sector. The United States will use the next review to press for continued compliance with the agreement's provisions.

Satellites

Under the 1990 U.S.-Japan satellite procurement agreement, the Japanese Government committed to open non-R&D satellite procurements to foreign satellite makers. Coverage includes procurement for broadcast satellites by NTT and NHK, the government-owned television/radio service.

To date, the agreement has been successful in opening the Japanese Government procurement market to foreign competition. From 1990 to 1997, U.S. satellite makers – world leaders in this field – won all five contracts (with a combined value exceeding $1 billion) openly bid under the competitive procedures outlined in the agreement. Given U.S. industries' strength in this area, the U.S. Government expects that the success will continue.

A particular concern of the United States in this area is the definition of "research and development (R&D) satellites." The United States recognizes that R&D satellites can be excluded from open bidding under the agreement, but has raised with the Japanese Government concerns that an overly-broad definition of R&D could unfairly deny U.S. and other foreign satellite makers access to procurement opportunities. The United States has emphasized that "R&D procurements" must be consistent with the definition outlined in the bilateral agreement. Specifically the United States contends that they: (1) incorporate technology new to either country that is to be used entirely, or almost entirely, for the purpose of in-space development and/or validation of the new technology; (2) are not intended for the provision of commercial or regular services; and (3) do not finance the development of satellites or satellite componentry that can be used in the commercial or non-R&D government market.

The United States continues to carefully monitor Japan's adherence to the terms of the agreement, especially in light of recent Japanese Government announcements related to future satellite procurements.

Supercomputers

The United States and Japan concluded the 1990 U.S.-Japan Procedures to Introduce Supercomputers to ensure fair access for U.S. supercomputer manufacturers to Japan's high-performance computing market. Under the 1990 agreement, Japan committed to implement transparent, open, and non-discriminatory competitive procurement procedures for supercomputers in the Japanese public sector and to ensure that procuring entities are fully able to procure the supercomputer that best enables them to perform their missions.

Results under the 1990 Supercomputer Agreement have, generally, been unsatisfactory, and a significant gap still exists between the U.S. share of the competitive Japanese private sector market for supercomputers and the Japanese public sector market. After a notable increase in the U.S. share of Japanese public sector supercomputer market in FY93 and FY94, which brought it close to U.S. firms' 45-50 percent of the Japanese private sector supercomputer market, more recent results under the agreement have been disappointing. U.S. firms won only one of 11 procurements in FY95, two of eight procurements in FY96, and only one of five procurements in FY97. In addition to the discrepancy between U.S. share of the public and private sector markets, the United States is disturbed by a continuing trend whereby nominally competitive GOJ supercomputer procurements are attracting only one bidder. This is a possible indication that the private sector does not perceive these procurements to be sufficiently open.

During the annual bilateral consultations on the agreement in Washington D.C. in August 1998, the United States raised concerns over Japan's implementation of the agreement, specifically over its use of inappropriate technical requirements in public supercomputer procurements. The United States has emphasized that this practice is inconsistent with the terms of our bilateral agreement and is, therefore, unacceptable. The United States will continue to press Japan to ensure that the terms of the bilateral supercomputer agreement are faithfully implemented, including the use of neutral and nondiscriminatory technical requirements.

The United States and Japan also agreed at the August 1998 consultations to initiate discussions on revising the threshold for coverage under the agreement to take account of advances in computing technology since the coverage threshold was last revised in 1995. This discussion is ongoing.

Telecommunications

NTT Arrangement: NTT, which is Japan's single largest purchaser of telecommunications equipment, accounts for about one third of Japan’s $35 billion telecommunication equipment market. As such, the “NTT market” has been of key interest to U.S. and other foreign telecommunications firms. In September 1997, the NTT procurement arrangements were renewed for the sixth time since 1980, when the initial arrangement became effective. The renewed arrangements improved NTT procurement procedures to increase procurement transparency, enhance access to technical specifications and other information needed to prepare bids, and promote increased reliance on international standards. In addition, NTT Communication-ware Corporation (NTT COMWARE) joined three other NTT subsidiaries (NTT Data Communications, NTT Mobile Communications, and NTT Power and Building Facilities) in agreeing to voluntarily adopt the measures. The current arrangement is due to expire when NTT is restructured, currently scheduled to occur July 1, 1999. The two governments will initiate formal discussions on the future of the agreement in the Spring of 1999.

The United States and Japan conducted an annual bilateral review of the FY 1997 results of the improved NTT Arrangement in October 1998. During this review, NTT reported that overall procurement of foreign products increased from 173 billion yen in FY 1996 to 185 billion yen in FY 1997. The fact that overall NTT procurement of goods and services declined in FY 1997 made that increase all the more significant. The United States believes that this is an indication that the NTT Arrangement has been effective in bringing the United States closer to its aim of increasing competition and improving the openness, fairness, and transparency of the telecommunications market in Japan. Nonetheless, the United States has emphasized that there continues to be room for improvement. Despite the progress made over the last year, results to date under the NTT Procurement Arrangement still do not match the success foreign firms have achieved in other, more open, parts of the Japanese market and in telecommunications markets globally. U.S. firms have demonstrated remarkable international competitiveness and a strong commitment to the Japanese market. As such, the United States expects continued growth in NTT’s procurement of foreign, and particularly U.S., equipment. As annual NTT procurements exceed $10 billion, the potential increase in U.S. telecommunications exports if NTT procurement practices are further liberalized is significant.

The differential between U.S. companies’ success in their sales to the private Japanese telecommunications sector and their sales to NTT suggest that NTT is still reaping the benefits of its monopolistic legacy and is not fully responsive to market principles in its procurement. Evidence indicates that NTT continues to favor its "family companies" for the bulk of its telecommunications equipment purchases; that NTT continues to over-engineer and under-document specifications; that specifications are too often Japan-specific or NTT-specific; and that allocation of supplier market share for products is often based on non-transparent criteria. These practices raise costs to NTT and its customers, impede competition, and pose significant market access barriers.

NTT's practices hamper competition not only in the market for equipment, but for services as well. Across a spectrum of equipment categories, telecommunication service companies competing against NTT are required to use NTT-family developed equipment at considerably higher costs than comparable equipment available in international markets. To support a truly multi-vendor market for such equipment, and encourage cost-effective facilities-based competition, the standards, specifications, and interfaces for equipment connecting to the public switched network should not be determined solely by NTT and its family-companies, but should reflect international standards and be determined through a process which is open to all vendors or service suppliers.

Public Sector Procurement Agreement on Telecommunications Products and Services: The 1994 U.S.-Japan Public Sector Procurement Agreement on Telecommunications Products and Services was intended to significantly increase access for foreign telecommunications products and services in Japan's public sector. Pursuant to the agreement, Japan has introduced procedures to eliminate barriers such as: (1) unequal participation in pre-solicitation and specification-drafting for large-scale telecommunications procurements; (2) ambiguous award criteria; and (3) excessive sole sourcing. The agreement also includes quantitative and qualitative criteria for measuring progress such as: (1) annual value and share of purchases of foreign products; (2)annual procurements of foreign products and services by entity; (3) contracts awarded for foreign products and services by entity; (4) annual numbers and values for contracts awarded as a result of single tendering; and (5) new subcontracting opportunities for foreign suppliers.

As in several other sectors, the United States remains concerned about the continued low foreign share of Japanese Government procurement of telecommunications products and services. The foreign market share in this important area rose only slightly between 1996 and 1997, increasing from 3.5 percent to 3.9 percent. This represents a significant decline from the 13 percent share of this market held by foreign firms in 1995. The United States will question whether all procurements covered by this agreement are in fact conducted in accordance with the agreement’s provisions.

The United States also remains concerned about Japan's steadily increasing reliance on contracts awarded through sole source tendering. Despite the fact that the agreement calls for a reduction in sole sourcing, the share of total procurements for telecommunications equipment and services transacted through sole source tendering grew from 5 percent in 1994 to approximately 27 percent in 1997. The United States has urged Japan to take immediate steps to reverse this trend. Further, the United States objects to Japan’s persistent failure to provide information on procurements made by the Japan Defense Agency, even though the agency is covered under the bilateral agreement. The use of international standards in this sector also remains a problem. The United States continues to urge Japan to increase its use of international standards rather than rely on often-outdated Japan-specific standards. Finally, the United States is maintaining pressure on Japan to ensure that information on procurements is provided to domestic and foreign companies on an equal basis. The next bilateral annual review of this agreement will be held in the Spring of 1999.

LACK OF INTELLECTUAL PROPERTY PROTECTION

When the Clinton Administration assumed office in 1993, it identified inadequate intellectual property protection as a serious structural barrier to U.S. economic interests in Japan. The United States has pursued its intellectual property goals with Japan through a firm policy that has combined close bilateral consultations and negotiated agreements (including two bilateral patent agreements from 1994); effective policy coordination in multilateral and regional fora; and strong action in the WTO when necessary to defend U.S. intellectual property interests in Japan.

The sound recordings dispute of 1996-97, which represented the first intellectual property dispute settlement case at the WTO, was resolved when Japan amended its law to fulfill its obligations in the U.S. favor. The result of this policy has been an increase in the level of protection afforded U.S. intellectual property in Japan, and a stronger Japanese role in pushing for stronger worldwide intellectual property protection. Although intellectual property piracy in Japan has dropped and significant improvements have been made to Japan's legal and administrative intellectual property framework, the United States has identified a number of areas where further action by Japan would be appropriate, including: (1) addressing persistent patent-related problems; (2) improving and expanding protection of copyrighted works; (3) speeding trademark application approval processes and expanding protection for well-known trademarks; (4) affording greater protection of trade-secret information; and (5) illuminating and gaining access to non-transparent border enforcement mechanisms. Due to the existence of such concerns, in May 1998, Japan was again notified that it remains on the Special 301 "Watch List" of countries from which the United States seeks stronger intellectual property rights protection.

Patents

The United States remains concerned with elements of Japan's patent protection regime and has focused particular attention on improving registration access and approvals, and reforming Japan's practice of affording only narrow patent claim interpretation. Japan has taken steps to implement its commitments under two 1994 bilateral patent agreements, which: allow patent applications to the Japan Patent Office to be filed in English; permit the correction of translation errors after patent issuance; end dependent patent compulsory licensing (except in cases where anti-competitive practices have been found); end the practice of allowing third parties to oppose a competitor's patent before it is granted and to hear all opposition claims at the same time; and provide a revised accelerated examination system. Notwithstanding, the United States remains concerned with several aspects of Japan's patent administration including the relatively slow process of patent litigation in Japanese courts, the lack of an effective means to compel compliance with discovery procedures, and the lack of adequate protection for confidential information produced relative to discovery. Further, we remain concerned with the fact that Japanese courts generally require strict proof that a patentee's process is actually being used, creating burdens of proof which are particularly burdensome to foreign patent owners.

On February 24, 1998, the Japanese Supreme Court issued its first decision to permit an infringement finding under the "doctrine of equivalents." While the United States welcomes that decision, because patents in Japan continue to receive only a narrow scope of protection, we will closely follow lower court treatment of future similar cases.

The Japan Patent Office (JPO) has set a target of reducing the examination period further to 12 months by 2000. The JPO also plans to revise the patent law in 1999 to accelerate the period from patent application to approval (from the current maximum of seven to nine years to a maximum of three to four years); extend royalties retroactively to immediately following patent application; and to make it easier for plaintiffs to prove patent infringement in courts. The United States is encouraged by these steps which, if enacted, would further strengthen the level of patent protection in Japan and we will continue to work press Japan to implement these provisions.

Copyrights

Japan has made progress in combating computer software piracy in recent years, with the "piracy rate," as calculated by U.S. industry, falling in the past three years from roughly 50 percent (of software in use) to roughly 30 percent in 1997. While this latter number is closer to developed country norms, the United States believes that Japan should adopt measures to reduce the piracy rate further. A notable step toward creating an effective deterrent against piracy would be the amendment of Japan's Civil Procedures Act to award punitive damages rather than actual damages and to provide for more effective procedures for the collection of evidence. Additionally, in order to lead the private sector by example, we urge Japan to issue a policy statement clarifying Japan's commitment to use only legitimately produced and licensed software in its government's operations.

In March 1997, Japan amended its copyright law to protect sound recordings produced in the United States and other WTO countries within the past 50 years. This represented the resolution of the first intellectual property dispute settlement case at the WTO, which the United States initiated against Japan in 1996 after Japan failed to provide full "retroactive" protection to pre-existing sound recordings in accordance with the

TRIPs (Trade Related Aspects of Intellectual Property) Agreement. The United States expects similar treatment of piracy over digital networks, including digital music broadcasting services. Japan has agreed to the World Intellectual Property Organization (WIPO) Copyright Treaty and the Performances and Phonograms Treaty. When ratified, these agreements will provide new protection for producers and performers of material transmitted over the Internet. The United States will be monitoring Japan's implementation of these agreements.

Trademarks

A number of revisions to Japan's Trademark Law came into force in 1997. The revisions were intended to accelerate the granting of trademark rights, strengthen protection of well-known marks, address problems related to unused trademarks, and simplify trademark registration procedures in order to bring Japan into compliance with the Trademark Law Treaty. These measures also increase penalties for trademark infringement. Regrettably, in spite of the existence of provisions in Japan's Unfair Competition law designed to afford greater protection to well-known marks, protection of such marks remains weak.

Further, the unjustifiably slow trademark registration process in Japan, which requires approximately 36 months versus 16-18 months in the United States, impose burdens on foreign mark holders who must register their marks in Japan before seeking enforcement. The United States urges Japan to shorten this registration periods to acceptable levels.

Trade Secrets

The United States remains concerned about Japan's inadequate protection of trade secrets. Although Japan amended it's Civil Procedures Act to improve the protection of trade secrets in Japanese courts by excluding court records containing trade secrets from public access, this legislation does not adequately address the problem. Because the Japanese Constitution prohibits closed trials, the owner of a trade secret seeking redress for misappropriation of that secret in a Japanese court is forced to disclose elements of the trade secret in seeking protection. Because of this, and the fact that court discussions of trade secrets remain open to the public with no attendant confidentiality obligation on either the parties or their attorneys, protection of trade secrets in Japan's courts will continue to be considerably weaker than in the courts of the United States and other developed countries. The United States considers this to be unacceptable and will press Japan to undertake further reform in this area.

Border Enforcement

The United States is also concerned with the non-transparent aspects of, and access to, Japan's border control measures. In general, we urge Japan to improve its Customs recordation and information submission procedures to make it easier for foreign rights holders to avail themselves of protection from Japan's Customs authorities. Further, insofar as Japan provides ex-officio border enforcement of trademarks and copyrights through the Japan Customs & Tariff Bureau (JCTB), efforts should be made to enhance such enforcement through aggressive interdiction of infringing articles. In addition, we are concerned by the 1997 Japan Supreme Court decision to allow parallel imports of patented products and will be monitoring JCTB's implementation of this policy.

SERVICES BARRIERS

Financial Services

Japanese financial markets have traditionally been both highly segmented and strictly regulated, and as such, have discouraged the introduction of innovative products where foreign firms may enjoy a competitive advantage and otherwise restricted business opportunities for foreign firms. Some of the restrictions that have impeded access include the use of administrative guidance, existence of a *keiretsu* system (interlocking business relationships), lack of transparency, inadequate disclosure, the use of a positive list to define a security, and lengthy processing of applications for new products. Each of these restrictions has hindered the emergence of a fully competitive market for financial services in Japan.

With a view to eliminating or reducing these barriers, on February 13, 1995, the United States and Japan concluded a comprehensive financial services agreement, "Measures by the Government of Japan and the Government of the United States Regarding Financial Services." This agreement features an extensive package of market-opening actions in the key areas of asset management, corporate securities, and cross-border financial transactions.

In the two years since the agreement was signed, Japan has implemented the vast majority of the commitments made within the specified time frames. In some instances, the timetable for implementation was accelerated. In a few areas, Japan has taken or announced additional actions for future implementation to improve the liberalization of Japanese financial markets.

The United States is currently closely monitoring the agreement to ensure that implementation remains on schedule and to assess the impact of the actions undertaken using the quantitative and qualitative criteria included in the agreement. At the March and October 1997 reviews, the United States emphasized the need for further improvements in financial disclosure and transparency. Japan is a signatory to the December 1997 WTO Financial Services Agreement, wherein it bound many liberalization measures agreed to bilaterally. The WTO Financial Services Agreement entered into force on March 1, 1999.

In an announcement on November 11, 1996, then-Prime Minister Ryutaro Hashimoto committed Japan to conducting broad-based deregulation of Japan's financial sector, aimed at making Tokyo's financial markets comparable to those of New York and London by 2001. The Japanese Government's "Big Bang" financial reform plans involve such major changes as allowing mutual entry across financial sectors, tax changes, liberalization of commissions, liberalization of foreign exchange transactions, tightened disclosure rules, and further liberalization of asset management regulations. These changes could create important new business opportunities for U.S. financial services providers. Despite increased attention to financial sector stability issues in late 1997 following several prominent financial bankruptcies, the Japanese Government has thus far adhered to its reform schedule, with a few exceptions. The Japanese Government introduced financial liberalization legislation into the Diet in March 1998 and the United States will continue to watch developments closely.

Insurance

Japan is the world's second largest market for insurance with annual premium revenues of $329 billion in JFY 1997. Ministry of Finance (MOF) regulations, informal guidance, and non-transparent industry association activities all act to limit competition and market access in Japan's insurance market. While foreign firms' shares of other G-7 countries' domestic insurance markets range from 10 to 33 percent, their share of the Japanese market is only 3.8 percent. Foreign firms in JFY 1997 had less than two percent of the primary life insurance market and under three percent of the primary non-life market (mostly auto, fire and marine insurance). Together, these two primary sectors account for roughly 95 percent of Japan's overall insurance market. However, the important role of foreign firms in developing new products and sales channels in the remaining five percent market segment, the so-called *third sector*, is reflected in their greater than 40 percent share of this sector.

On October 11, 1994, the United States and Japan concluded a bilateral insurance agreement under the U.S.-Japan Economic Framework. By the fall of 1995, however, it became apparent to the United States that Japan intended to allow its insurance subsidiaries to operate in the third sector in a manner contrary to key provisions of the 1994 agreement. Following a year of difficult negotiations, on December 24, 1996, the United States and Japan reached agreement on a package of "Supplementary Measures" which would significantly deregulate Japan's insurance market, while ensuring the avoidance of “radical change” in the third sector. The Administration is closely monitoring the implementation of both agreements to ensure that the anticipated increased market access for foreign firms materializes.

1994 Insurance Agreement: The October 1994 Insurance Agreement commits Japan to enhance regulatory transparency, strengthen antitrust enforcement, introduce a "notification system" for the approval of insurance rates and products, and undertake specific liberalization measures. MOF has, to varying degrees, implemented these provisions. The agreement also sets forth MOF’s intention to allow insurance brokers to operate in Japan. However, while Ministry has established the framework for a broker system, the continued inability to differentiate insurance product form and type has limited opportunities for brokers.

Among other things, the 1994 Agreement calls for five Japanese Government corporations with large annual insurance requirements to use fair, transparent, non-discriminatory, and competitive criteria in their yearly allocation of insurance premium shares. Implementation of this remains a key concern; only one of the covered government corporations (the Housing Loan Corporation) has disclosed its premium allocation criteria. For all five corporations, the foreign share of premiums remains negligible even relative to foreign insurers' small share of the private-sector Japanese insurance market.

The Agreement also called for Japanese and foreign insurers in Japan to complete, by March 1995, a study of the impact of *keiretsu* business relationships and case agents on insurance purchasing patterns in Japan, and for the Japan Fair Trade Commission (JFTC) to conduct its own insurance study. As of February 1998, the private sector study had essentially been abandoned due to the Japanese industry's unjustifiable refusal to either design or undertake a meaningful study. The JFTC announced in November 1997 that it had begun its own study and hoped to complete it by the end of 1998. The United States strongly believes that the JFTC should devote sufficient resources toward ensuring that large Japanese insurance firms discontinue their abuse of *keiretsu* relationships and refrain from the use of other business practices that impede competition.

Finally, the 1994 Agreement contains a provision related to "mutual entry" of life insurers into non-life markets and of non-life insurers into life insurance markets. Until the enactment of the Insurance Business Law (IBL) on April 1, 1996, life and non-life insurance firms were strictly prohibited from doing business in each other’s sectors. The new Insurance Business Law allows subsidiaries to engage in such activities. Under the 1994 Agreement, Japanese also agreed to avoid "radical change" in the third sector until foreign, as well as small and mid-sized Japanese insurers (market participants that have a greater dependence on the third sector markets), have been provided a reasonable period to compete in significantly deregulated primary life and non-life sectors.

1996 Insurance Agreement: The "Supplementary Measures" of December 1996 defined the scope and timing of primary sector deregulation to be undertaken by MOF. The agreement also defines the scope of business activities of the Japanese insurance subsidiaries in the third sector consistent with the commitment to avoid radical change. In December 1997, Japan agreed to bind these commitments under the WTO Financial Services Agreement.

Under the 1996 Agreement, Japanese committed itself to approve, by September 1997, applications for automobile insurance containing differentiated rates based on a range of risk criteria, such as age, gender, driving history, geography, and vehicle usage. This commitment was implemented on schedule. Japan also committed itself to obtain Diet passage and implement legislation amending the Rating Organizations Law to eliminate the authority of ratings organizations to set industry-wide rates for

automobile and fire insurance. Such rating organizations, which are comprised of all non-life insurers, have traditionally operated as rate-setting cartels, exempt from the Antimonopoly Act.

Japan also implemented its commitment to expand the list of products to be included under the "notification system." This accelerated the introduction of innovative products, including several important liability lines. MOF has also reduced the threshold above which insurers will be permitted to offer flexible rates for commercial fire insurance from the 30 billion yen (contract value) at the time of the 1996 agreement to 20 billion yen in January 1997. This ceiling was further reduced to seven billion yen in April 1998.

With respect to the third sector, the 1996 Agreement commits the Japanese Government to prohibit or substantially limit Japanese insurers' new subsidiaries from marketing certain third sector products of particular importance to foreign insurers, such as cancer, hospitalization, and personal accident insurance, until foreign firms have had sufficient time to establish a presence in the deregulated primary sectors. The agreement stipulates that, should Japan fully implement all the primary sector deregulation measures contained in the 1996 Agreement by July 1998, a two-and-one-half year “clock” would begin regarding termination of the measures to avoid radical changed in the third sector.

In June 1998, the United States and Japan conducted a biannual review of Japan’s implementation of its commitments under the insurance agreements, including a review of its implementation of its 1996 obligations. During the review, the United States noted its serious concern with Japan’s implementation of its commitments to deregulate the primary sector. The United States concluded that Japan has not fully implemented its obligations with regard to reform of the non-life insurance rating organizations, which continue to engage in cartel-like actions, such as by imposing form and rate uniformity on consumers for products such as voluntary automobile insurance and fire insurance. Nor has Japan fully implemented its obligations to approve new products and rate applications within the standard 90-day processing period. Since all of the primary sector deregulation criteria had not yet been fulfilled, USTR announced on July 1, 1998, that the United States does not support the initiation of the two-and-one-half year clock regarding the third sector measures.

In addition to inadequate deregulation of the primary sector, the United States remains seriously concerned about several aspects of Japan’s administration of the insurance sector. Foreign firms have frequently encountered a lack of transparency, as exemplified by the establishment of insurance policyholder protection organizations in Japan in 1998. A similar lack of transparency was seen in the process to reform the rating organizations, revise rates for personal accident insurance, reallocate premiums of the Housing Loan Corporation among insurance providers, and in the approval process for new products and rates. In addition, the United States is extremely concerned with the diminution of the third sector safeguards caused by increased activity on the part of Japanese insurance firms and subsidiaries in this market segment. The United States continues to press these issues at and insists upon full and faithful implementation of the measures contained in each of the insurance agreements.

The Administration is prepared to utilize all of the tools at our disposal to ensure the full benefits to U.S. industry from our bilateral Insurance Agreement. With the entry into force of the WTO Financial Services Agreement on March 1, the United States now enjoys multilateral rights of enforcement under the WTO Dispute Settlement rules with respect to measures Japan has committed to take to deregulate and open its insurance market. Of course, we continue to retain our rights under U.S. trade law to enforce our trade agreements.

Professional Services

The Administration continues to seek improved access for professional service providers in Japan, through (1) our bilateral Public Works Agreements for construction, architectural, and engineering services; (2) under the Enhanced Initiative on Deregulation for legal services; and (3) multilaterally in the WTO for accounting and auditing services.

The ability of foreign firms and individuals to provide professional services in Japan is hampered by a complex network of legal, regulatory and commercial practice barriers. U.S. professional services providers are highly competitive and the United States expects the export of such services to continue to grow in the future. These services are important, not only as U.S. exports in themselves, but as vehicles to facilitate access for U.S. exporters of other services and goods to the Japanese market. Moreover, U.S. services professionals often can contribute valuable expertise gained from operating widely in international markets and stimulate innovations for the economies in which they serve.

Through the WTO Working Party on Professional Services, WTO members are developing disciplines on the regulation of the accountancy sector to make it easier for accountants to provide their services on a cross-border basis or in other countries. The forthcoming GATS negotiations in 2000 also will offer an opportunity for liberalization of accountancy and other professional services.

Accounting and Auditing Services

U.S. providers of accounting and auditing services also face a series of regulatory and market access barriers in Japan which impede their ability to serve this important market. In Japan, regulated accounting services may be provided only by individuals qualified as Certified Public Accountants (CPA) under Japanese law, or by an Audit Corporation (composed of five or more partners who are Japanese CPAs). To become qualified as a CPA in Japan, a foreign accountant must pass a special examination for foreigners in order to obtain a professional certification. This examination was last offered in 1975. CPAs in Japan must also be registered as members of the Japanese Institute of Certified Public Accountants and pay membership fees.

Only individuals who are Japanese CPAs can establish, own, or serve as directors of Audit Corporations. An Audit Corporation may employ foreign CPAs as staff, but foreign CPAs are not allowed to conduct audit activities. Furthermore, an Audit Corporation may engage in a partnership/association relationship with foreign CPAs only if the partnership/association does not provide audit services. Audit Corporations are prohibited from providing tax-related services, although the same individual may perform both functions as long as totally separate offices are maintained. Establishment is required for Audit Corporations, but not for firms supplying accountancy services other than audits.

Branches and subsidiaries of foreign firms, however, are not authorized to provide regulated accounting services. Nor can a foreign firm practice under its internationally recognized name; its official firm name must be in Japanese and is subject to approval by the Japanese Institute of Certified Public Accountants.

Further, restrictions on marketing apply to all accountancy services provided by CPAs and audit corporations. The United States will continue to press Japan to open its market to American services.

Legal Services

U.S. lawyers have sought greater access to the Japanese legal services market and full freedom of association with Japanese lawyers since the 1970s. However, strong opposition from the *Nichibenren* (Japan Federation of Bar Associations) and a reluctant Japanese bureaucracy has largely thwarted this objective.

Since 1987, Japan has allowed foreign lawyers to establish offices and advise on matters concerning the law of their home jurisdictions in Japan, as foreign legal consultants (*gaikokuho-jimu-bengoshi*), subject to restrictions in the Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers (Law No. 66 of 1986, as amended) (Foreign Lawyers Law). Since this Law was enacted, Japan has liberalized several of the restrictions on foreign lawyers, including allowing foreign lawyers to represent parties in international arbitrations in Japan; reducing the experience required to register as a foreign legal consultant from five years to three years; allowing foreign lawyers to count the time spent practicing the law of the lawyer's home jurisdiction in a third country toward meeting the three-year experience requirement; liberalizing the ability of foreign legal consultants to practice third-country law with written advice from foreign lawyers qualified in that third country; and reducing the restrictions on the use of law firm names. However, Japan has adamantly refused to remove the most restrictive regulatory hurdle facing foreign lawyers in that country -- the ban on hiring or forming partnerships with Japanese lawyers (*bengoshi*) in Japan.

In an October 1998 submission to Japan under the Enhanced Initiative on Deregulation and Competition Policy, the United States stressed that it is essential that Japan's services infrastructure, especially its legal service providers, be capable of fulfilling the new opportunities created by the "Big Bang" and other market liberalizations and deregulation. In particular, both Japanese and foreign parties must be able to obtain fully integrated transnational legal services for domestic and cross-border transactions. To that end, the United States made the removal of the ban on partnerships and employment its top priority.

Rather than allow Japanese attorneys and foreign lawyers to form full partnerships, as is the common practice in most other countries, Japan in 1995 created, through an amendment to the Foreign Lawyers Law, an arrangement that is unique to Japan -- "specified joint enterprises" (*tokutei kyodo jigyo*) between Japanese attorneys and foreign lawyers. Foreign lawyers have repeatedly complained that this arrangement is not an adequate substitute for partnerships, despite an expansion of the scope of the enterprises in 1998, and only a handful of foreign firms have created joint enterprises. Even those that have formed joint enterprises have faced difficulties. The *Nichibenren* has harassed one joint enterprise because the *bengoshi* in the joint enterprise uses the name of the foreign law firm, despite the fact that it does not violate any law or regulation. The United States has raised its concerns with the *Nichibenren's* inappropriate use of its regulatory authority.

In its October 1998 submission, the United States also requested that full credit toward the three-year experience requirement to register as a foreign legal consultant be given a foreign lawyer for experience working for a foreign legal consultant in Japan, and not just the one year allowed under current practice. The United States also recommended that Japan increase the number of trainees admitted to the Japanese Supreme Court's Legal Research and Training Institute to no less than 1500 trainees annually as soon as possible, but no later than after April 1, 2000, and explore alternative ways of obtaining legal qualification outside the Legal Research and Training Institute or a radical expansion of the Institute. In addition, the United States asked Japan to allow complete freedom of association among all types of legal professionals and to allow quasi-legal professionals to participate directly in foreign law firms.

The United States is continuing to press Japan to remove the ban on partnerships and employment, as well as other unnecessary and unreasonable restrictions on legal services in Japan, emphasizing that the Ministry of Justice and the *Nichibenren* must not be allowed to continue to thwart the development of a globally competitive legal services sector in Japan.

Telecommunications Services

The United States remains deeply concerned about Japan's excessive regulation of, and inadequate safeguards against anti-competitive activities committed by, incumbent telecommunications carriers, both of which undermine competition by raising costs and delaying entry or operations of new competitors.

Perhaps the most significant impediment is the high cost and onerous conditions associated with interconnecting to the Nippon Telegraph and Telephone Corporation (NTT) network. Judged by the book value of its telecommunications plant per minute of traffic, NTT's costs are about four times those of U.S. local exchange carriers -- costs that it imposes on competitors by embedding them in interconnection fees. In addition, NTT is permitted by the MPT to recover bloated costs for new services such as ISDN, by recovering these inefficient investments through interconnection rates, while subsidizing this service for its retail customers. This classic "price squeeze' behavior–forcing its competitors to lose money if they are to price a competing service at or below NTT's retail rates -- ensures that NTT's monopoly persists. As interconnection is a critical element in permitting competition, the United States strongly urges Japan to set interconnection rates as close as possible to competitive market prices in order to prevent NTT from imposing excessive costs on competitors. This also highlights the inherent contradiction of Japan's regulatory regime in that MPT is simultaneously engaged in industrial policy -- promotion of ISDN -- while trying to regulate a dominant carrier. The MPT has distorted the market in two ways by forcing NTT to subsidize development of a questionable service and permitting NTT to pass on uneconomic interconnection rates to its competitors.

The arbitrary and anti-competitive result of the current interconnection regime is demonstrated in interconnection rates for so-called tandem-level switching, which contains a rate element (transporting calls a short distance in the local market) which is twenty-five times comparable rates in the united States. It appears that NTT engages in such manipulation since its arbitrary decisions on how to allocate costs are not subject to audit.

Japan has committed itself to introduce a pro-competitive methodology for calculating NTT's interconnection charges which will address these issues in 2000 and to reduce rates before then. However, NTT's revised interconnection tariff applicable to JFY 1998 contained only minimal reductions in interconnection rates and maintained other deficiencies, including an anti-competitive rate structure where retail rates are consistently priced below interconnection rates. NTT also failed to provide cost-based access to ducts, conduits and dedicated transport throughout its network, and failed to guarantee timely interconnection. The United States has also expressed concern about high charges and unfair conditions for interconnection imposed by NTT DoCoMo, the dominant wireless carrier, and has asked Japan to curb these abuses by imposing stricter interconnection obligations required of "designated facilities." Given that wireless traffic is rapidly approaching wireline traffic in importance in Japan, the

Japanese Government's willingness to ensure fair competition in this area will be essential in creating a competitive environment in the Japanese telecommunications sector.

The United States has also raised concerns about the inadequacy of Japanese Government regulations to ensure fair access for new competitors to the poles, ducts, conduits and other rights of way they will need to construct their networks in Japan. These scarce resources are often controlled by entities such as NTT and utility companies that have a strong incentive to delay market entry and raise costs for new telecommunications competitors. As a result, new entrants in Japan's telecommunications sector complain that it is difficult, costly, and time-consuming for them to build their own networks–significantly reducing their ability to compete. The United States has proposed that Japan establish pro-competitive rules to ensure non-discriminatory, transparent, timely, and cost-based access for both telecommunications carriers and cable TV operators. While appreciating the efforts of a recent Japanese Government study group to improve the current situation by advocating that entities controlling rights of way voluntarily publish application procedures to increase transparency, the United States Government believes that these measures are inadequate to ensure that access is available to new competitors on a timely and reasonable basis.

Moreover, U.S. industry wants assurances that users of telecommunications services can access the services of new entrants as easily as existing carriers. For example, current customers wanting to use KDD to place an international call must dial a three-digit access code, while access codes for other international carriers are four or six digits. The United States was encouraged by a recent MPT study group report that called for the introduction of a carrier pre-selection system, where users would choose their carriers up-front, rather than relying on access codes. However, we continue to have concerns about the timing and costs of the proposed system.

The requirement that new entrants negotiate with over 50 individual interconnection agreements with different telecommunications carriers to begin service where users can terminate calls anywhere in Japan also serves to delays entry and raises costs for new competitors. The United States believes that Japan should allow a clearinghouse system, where a carrier can pass traffic to an "intermediary" carrier for termination on a variety of different networks. This would obviate the need for individual agreements with each terminating carrier. A MPT study group is expected to issue a report on this issue by the end of JFY 1998 (March 31, 1999).

Further, new competitors are also seriously impeded by MPT restrictions on the leasing of lines by facility-based carriers and the ownership of lines by non-facility based carriers. Companies wishing to develop a network using a combination of owned and leased elements -- often the most efficient way to build a network -- are burdened with having to set up and manage separate subsidiaries, which is an inefficient structure. The Japanese Government places restrictions on the use of new technologies, which utilize power mains to transmit communications signals for a range of innovative automation and control services, even though this method is widely used in the United States, Europe and Canada. The United States urges Japan to remove these restrictions as soon as possible to allow the development of these new technologies.

As a general regulatory policy issue, the United States is concerned that there is no system for differentiating the treatment of dominant carriers from non-dominant carriers in Japan's regulatory policies. In the U.S. view, competition is best stimulated by focusing regulatory oversight on "dominant carriers" -- carriers in a position to hold consumers and competitors "hostage" through control over services or underlying facilities -- while allowing carriers without such market power to operate with minimal constraint to speeds the introduction of new products and services. Currently in Japan, there is a dramatic over-regulation of non-dominant carriers and an insufficient regulation of dominant carriers.

The United States is also concerned with possible anticompetitive implications of aspects of NTT's planned 1999 restructuring; continued foreign investment restrictions in NTT, cable TV businesses, and direct-to-home satellite services; timing and costs of implementing a number portability system; restrictions on the structure and operations of direct-to-home satellite broadcasting services; the introduction of third generation wireless standards in Japan; and burdensome licensing procedures.

INVESTMENT BARRIERS

Japan's stock of inward foreign direct investment (FDI), relative to the overall size of its economy, appears minuscule in comparison to that of other advanced industrialized countries. In 1997, for example, the value of Japan's stock of inward FDI totaled only about 0.8 percent of the nation's 1997 gross domestic product, as compared to roughly 8 percent for the United States. Japan's outward investment flows, on the other hand, dwarf investment into Japan: the ratio of outward-to-inward FDI averaged 11-to-1 between 1990 and 1996. In 1997, Japanese overseas FDI was $50 billion; Japan's inward FDI was only $5 billion.

Acknowledging that Japan's inward investment lags far behind that of other industrialized economies, Japan has taken some limited actions to address the problem, aimed at making the environment for foreign investment in Japan more attractive. In 1994, Japan established the Japan Investment Council (JIC), chaired by the Prime Minister and charged with: promoting measures to improve Japan's investment climate; coordinating policies of ministries and agencies concerned with investment; and disseminating information on investment-promotion measures. In 1995, the JIC released a statement that encouraged FDI and listed a few useful policy measures, and in 1996 the JIC issued a policy statement and action plan aimed at increased inward investment through mergers and acquisitions. The JIC has also prepared less formal on local government investment promotion efforts and labor market mobility.

Although most direct legal restrictions on foreign direct investment have been eliminated, bureaucratic obstacles remain, including the occasional discriminatory use of bureaucratic discretion. While Japan's foreign exchange laws currently require only ex-post notification of planned investment in most cases, a number of sectors (e.g. agriculture, mining, forestry, fishing) still require prior notification to government ministries. More than government-related obstacles, however, Japan's low level of inward FDI flows reflects the impact of exclusionary business practices and high market entry costs.

Difficulty in acquiring existing Japanese firms -- as well as doubts about whether such firms, once acquired, can continue normal business patterns with other Japanese companies -- make investment access through mergers and acquisitions more difficult in Japan than in other countries. Extensive cross-shareholding among allied companies and difficulties foreign firms encounter in hiring employees also helps inhibit direct foreign investment.

Investment Arrangement: In July 1995, the U.S. and Japan concluded an arrangement entitled "Policies and Measures Regarding Inward Direct Investment and Buyer-Supplier Relationships" that lays out the inward FDI promotion policies instituted by the Japanese Government during the course of the Framework Agreement investment negotiations. The Arrangement commits Japan to expand efforts to inform foreign firms about FDI-related financial and tax incentives, and to broaden lending and eligibility criteria under these programs; make low interest loans and tax incentives under the 1992 "Inward Investment Law" available to foreign investors; propose measures to improve the climate for foreign participation in mergers and acquisitions; and strengthen the FDI promotion roles of the Japan Investment Council, Office of the Trade Ombudsman, JETRO, and the Foreign Investment in Japan Development Corporation.

The "Inward Investment Law" has been extended from May 1996 to May 2006. In addition, the Ministry of International Trade and Industry has lowered the interest rate charged by the Japan Development Bank (JDB) to foreign investor in high-technology projects. In April 1996, foreign firms' eligibility for tax incentives was extended from the first five years to the first eight years of operation of a foreign firm in Japan. Looked at in their totality, however, Japan's FDI promotion policies are mostly appendages to domestic-oriented investment-promotion programs, and do not appear significant enough to immediately overcome the continuing fact of low foreign investment levels in Japan.

Investment Talks: After the signing of the Investment Arrangement, the bilateral discussions of the Investment Working Group under the Framework Agreement have focused more broadly on needed changes in the basic operating rules of Japanese markets, in order to encourage policy changes that will help improve Japan's overall environment for foreign (and domestic) investment. More specifically, through these talks, the United States has urged Japan to consider measures that will assist with three key aspects of improving Japan's direct investment environment:

- Developing a more active and efficient market for mergers and acquisitions, in order to enhance the productivity of capital in Japan;

- Improving land market liquidity and foreign investors' access to land; and

- Increasing the flexibility of Japan's labor markets.

In July 1998, the Investment Working Group agreed to compile a follow-up report to the 1995 Investment Arrangement, which will focus on needed policy changes in these three areas. As part of that process, in October 1998 the U.S. Government offered specific proposals for areas where policy changes appear most likely to lead to significant improvement in Japan's investment environment.

In the area of mergers and acquisitions (M&A), these proposals included allowing consolidated taxation in order to spur investment by lowering the post-tax cost to a parent firm of investing in new risk ventures; taking steps to unwind extensive cross-shareholding (*mochiai*) in Japan, which greatly complicates market-based merger and acquisition (M&A) transactions; improving corporate governance practices in order to mitigate senior management emphasis on firm loyalty over shareholder return, which can lead to premature rejection of M&A offers; continuing with financial market deregulation, including allowing stock-for-stock transactions and easing stock market listing requirements; improving financial data disclosure to assist firms interested in pursuing M&A relationships with other firms; increasing the availability of M&A-related services, including further easing of restrictions governing the accounting and legal professions; and introducing smoother and more flexible bankruptcy procedures to make it easier for a corporation and its assets to be acquired or merged in a "rescue" format.

In the area of land and real estate transactions, the proposals focused on improving land market liquidity, and included undertaking additional land tax relief measures and steps to further shift the burden of land taxation from acquisition taxes to holding taxes; easing regulations on developing property in central urban districts as well as relaxing restrictions on the conversion of agricultural land; changing leasing rules to allow new investors to make flexible use of acquired property; making systematic disclosure of information on real estate transactions; and making changes to the Special Purpose Corporation (SPC) Law and other related regulations to facilitate the creation of real estate investment trusts (REITs).

Finally, the U.S. Government proposals concerning Japan's labor markets focused on improving labor mobility, and included introducing defined contribution pension plans as a useful way to improve pension portability; deregulating fee-charging employment agencies in order to assist foreign investors in locating needed local talent; liberalizing Japan's labor dispatching business in order to help new investors find workers and cut costs, as well as help unemployed workers find work; and easing excessively tight regulations concerning work rules, as well as other bureaucratic procedures which unnecessarily raise costs and lower the efficiency of corporate operations.

ANTICOMPETITIVE PRACTICES

Anticompetitive practices are a crosscutting issue in U.S.-Japan trade relations. In addition to the discussion in this section, there is further discussion related to anticompetitive practices and Antimonopoly Law (AML) enforcement in other sections: the Enhanced Initiative on Deregulation and Competition Policy, Insurance, Flat Glass, Paper and Paperboard, and Consumer Photographic Film and Paper.

Exclusionary Business Practices: American firms trying to enter or participate in the Japanese market face a host of exclusionary Japanese business practices that block market access opportunities. These include:

- Anti-competitive private practices -- such as bid-rigging, price-fixing, and exclusive dealing arrangements -- that violate the Antimonopoly Act but often go unpunished;

- Corporate alliances and exclusive buyer-supplier networks, often involving companies belonging to the same business grouping *keiretsu*, that work to protect "market stability" (e.g., stable market shares and profit margins);

- Questionable corporate practices that inhibit foreign direct investment and foreign acquisitions of Japanese firms (e.g., non-transparent accounting and financial disclosure, cross-holding of shares among *keiretsu* member firms, low percentage of publicly traded common stock relative to total capital in many companies, and restrictions on foreigners serving on corporate boards);

- Industry associations and other business organizations that develop and enforce industry-specific rules limiting or regulating, among other things, fees, commissions, rebates, advertising, and labeling for the purpose of maintaining "orderly competition" among their members, and often among non-members.

Exclusionary Japanese business practices exact a heavy toll on the Japanese economy. For example, many products and services cost substantially more, often two to three times more, in Tokyo than in other international cities. By constraining market mechanisms, such exclusionary business practices reduce the choices available to businesses and consumers, and raise the cost of goods and services, as is reflected in Japan's large internal-external price gap. In addition, by discouraging competitors who seek to break into Japan's market with innovative products and services, the practices impede the development of new domestic industries and technologies (e.g., in software, multimedia, and telecommunications). Moreover, such practices discourage potential foreign investors, whose market presence and technological innovation would stimulate the economy and provide critical channels for exports and sales by foreign firms.

Japan Fair Trade Commission's Enforcement Record: A key reason for the prevalence of anticompetitive business practices is the historically weak antitrust enforcement record of the Japan Fair Trade Commission (JFTC). The JFTC routinely faces domestic criticism for its lack of bureaucratic clout and reluctance to exercise its enforcement powers aggressively. Although there have been improvements in recent years due to sustained U.S. efforts under the Structural Impediments Initiative, the U.S.-Japan Framework Agreement, the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy, and annual bilateral antitrust consultations, which have all combined to help the JFTC muster domestic support for its gradual strengthening, the JFTC's enforcement efforts fall short of those needed to ensure that Japanese markets are open to competition from U.S. and other foreign companies.

The JFTC's ability to enforce Japan's AML is hindered by its historically weak stature among Japanese ministries, shortage of personnel, inadequate investigatory powers, and perceived lack of autonomy. The JFTC was "upgraded" in 1996 to allow the formation of an administrative general affairs bureau, an economic bureau, investigations bureau, and a new special investigation division to handle major cases. Previously, the JFTC was organized by departments, which relegated JFTC officials to a lower status relative to ministry officials. However, the JFTC failed to gain approval for the creation of a competition policy bureau and did not achieve the substantial gains it needs in enforcement personnel. In Japan Fiscal Year (JFY) 1998, JFTC staff increased by only 10 members from the levels of the previous year to a total of 557, of which 254 (7 more than JFY 1997) are engaged in investigation-related work. There are 59 investigators (an increase of four) in the special investigations department.

In JFY 1999, the Government of Japan plans to increase the JFTC's budget by 2.8 percent and increase its personnel by nine, of which seven will be assigned to the investigation bureau. Still, these increases remain too small for the JFTC to adequately enforce competition laws and policies. This is especially true given the potential effects on the Japanese competitive environment of the recent liberalization of holding companies, the increase in mergers (up 10.9 percent in 1998), imminent narrowing or abolishment of many AML exemptions, and deregulation. In its October 1998 submission to the Japanese Government under the Enhanced Initiative, the United States asked that it increase the JFTC staff by 25 persons each year over the next five years. Further, the United States proposed that the Japanese Government increase the JFTC's budgetary resources by 5 percent annually over the next five years.

The JFTC's public image as an effective enforcer of the AML lags behind recent improvements in its stature and enforcement performance. For example, after maintaining surcharge orders for cartel practices at very low levels during the 1980s, the JFTC has steadily increased its penalties since 1990. In 1997 the JFTC took legal measures in 27 cases -- 17 of these cases were so-called "hard core cartel" cases which resulted in $47.3 million in administrative surcharges. However, the JFTC rarely recommends criminally prosecuting Antimonopoly Law violators -- since 1990 the JFTC has filed only five "criminal accusations" with the Ministry of Justice for criminal prosecution. Similarly, there has never been imprisonment of a corporate executive for violating the AML. Although the JFTC is not alone among competition agencies in the world that rely heavily on administrative actions instead of criminal penalties, the JFTC's infrequent use of the AML's criminal provisions undermines its deterrence of cartel behavior.

In September 1998, the Chairman of the JFTC in a speech to a group in Osaka recognized that the number of criminal accusations filed by the JFTC to the Ministry of Justice has been few. He pointed to two reasons for the paucity of criminal accusations. First, the JFTC does not have the types of investigatory powers enjoyed by other Japanese criminal investigating authorities. This weakness makes it difficult for the JFTC to gather enough evidence to support filing a criminal accusation with the Ministry of Justice, which requires a great amount of evidence before it will accept a criminal accusation. Second, in addition to the already high evidentiary burden placed upon the JFTC by the Ministry of Justice, an extraordinary procedural rule (nonexistent in any other area of Japanese law) further intensifies the burden; that is, if the Ministry of Justice decides after receiving a criminal accusation that there is not enough evidence to warrant prosecution, it must report its decision of nonprosecution to the Prime Minister's Office. This extraordinary procedural requirement makes Ministry of Justice prosecutors demand that the JFTC support its criminal accusation with highly compelling evidence to ensure that they will never have to make a report of nonprosecution to the Prime Minister's Office. Due to these types of weaknesses and encumbrances, criminal prosecution of executives and firms for cartel-like behavior remains the exception rather than the rule in Japan.

Although the JFTC is nominally an "independent" commission with "independent" enforcement authority, its leaders are often drawn from other ministries, raising doubts about the commission's autonomy. Indeed, the JFTC commissioners always include former senior officials from trade-related ministries, notably, the Ministries of Finance, International Trade and Industry, and Foreign Affairs. Historically, the vast majority of JFTC chairmen have been former top career officials of the powerful Ministry of Finance. Japanese economic observers agree that as long as these "ex" ministry officials are involved in JFTC decision-making, the Commission cannot be considered truly "independent." The current JFTC Chairman is a former public prosecutor and ex-official (Ministry of Justice) who has raised some public expectations of a more activist JFTC enforcement role. The United States has yet to see whether a 1996 amendment raising the mandatory retirement age of the JFTC chairman from 65 to 70 will facilitate the candidacy of non-bureaucrats for the top JFTC job, and thus questions about the JFTC's independence remain.

Laws Distorting Competition

The JFTC administers or helps administer a number of laws and regulations that distort competition and often have anticompetitive effects.

Law Against Unjustified Premiums and Misleading Representations: The JFTC imposes unrealistic limits on the use of premium offers (prizes), and thereby discourages even legitimate cash lotteries and product giveaways used in sales promotions. Foreign newcomers, who depend on innovative sales techniques to market their company names and products, are severely impaired by the JFTC's restrictions on premiums. In addition, although the law aims to deter misleading or fraudulent advertising and labeling (itself a worthy policy), the JFTC allows "fair trade associations" (essentially, private trade associations) to set their own promotion, advertising and labeling standards through self-imposed "fair competition codes." This creates difficulties, especially for newcomers who are unfamiliar with local guidelines. Trade associations can, and often do, use the cover of these codes to set additional standards that are stricter than the JFTC regulations under the Premiums Law.

As of January 1999, there are 48 JFTC-authorized private premium codes. In April 1996, the JFTC incrementally liberalized its rules on premiums and other sales promotions, for example, by raising the maximum value of "open" cash lotteries (not requiring a purchase) to ten million yen; repealing restrictions on premiums offered by department stores; and eliminating the 50,000 yen ceiling on consumer premiums (while retaining price caps as a percentage of the transaction value). Moreover, over the last two years the JFTC abolished 24 of 29 industry-specific premium limits. The five industries that remain subject to stricter rules are real estate, household electrical appliances, newspapers, magazines, and hospital management. However, the JFTC changes fall short of the dramatic liberalization measures requested by the U.S. Government in Framework discussions and under the Enhanced Initiative for Deregulation and Competition Policy.

Resale Price Maintenance: In April 1997, the Japanese Government abolished all product exemptions of the AML, with the prominent exception of copyrighted products (books, magazines, newspapers, and CDs). There is no reason that retail price maintenance should be treated any differently under the AML than any other practice. The JFTC has been considering limiting or eliminating the retail price maintenance exemption for copyrighted products. On January 13, 1998, a study group to the JFTC recommended a phased elimination of this exemption, and the JFTC announced its decision on March 31, 1998, which stated:

- Even though the resale price maintenance exemption should be abolished from the viewpoint of competition policy, the issue should be further examined by carefully considering cultural impacts and influences;

- Until the final decision is made, the exemption is limitedly applied to books, magazines, newspapers, music CDS, cassettes and records; and

- The relevant industries should therefore make determined efforts to reduce the adverse effects of this system.

Business Reform Law: On April 1, 1995, Japan implemented the Law to Promote Business Reform for Specified Industries (Business Reform Law) which authorizes MITI to implement industrial policy measures in designated industries. The Business Reform Law expires on June 30, 2002 and the United States will strongly object to any efforts to extend it. Under this law, in exchange for a firm in a designated industry adopting a MITI-approved business reform plan, the Ministry will provide it with preferential measures, such as special depreciation allowances and company registration tax reductions. This type of preferential treatment distorts the market mechanism and runs counter to Japan's efforts to liberalize its economy through deregulation. Moreover, several targeted sectors include leading Japanese industries, such as automobiles and telecommunications, which are hardly in need of preferential treatment.

Additionally, under Article 7 of the Business Reform Law, when firms in the same industry jointly submit business reform proposals, the reviewing Minister may consult with the JFTC regarding the joint applications. The JFTC may provide legal analysis to the Minister, and if an Antimonopoly Law problem exists, the Minister will have an opportunity to further consult with the JFTC. In its October 1998 deregulation submission, the United States urged Japan to abolish Article 7 of the Business Reform Law because it inappropriately diminishes the independence of the JFTC by setting up a consultation mechanism which may be construed as an Antimonopoly Law exemption.

Cartel Exemptions: On February 16, 1999, the Cabinet announced its intention to introduce legislation which will eliminate the exemptions for Depression Cartels, Rationalization Cartels, and others. Under the Enhanced Initiative, Japan committed itself to submit legislation by March 1999 to implement these changes.

Relationship between Government and Industry

Japanese regulators view their role, not simply as neutral arbiters of a legal rule-based system, but as active players in guiding the respective industries under their purview. The close government-industry relationship in Japan often works to the disadvantage of foreign firms trying to enter or participate in the Japanese market because the relationship favors domestic firms. Several aspects of the relationship are of particular concern.

Private Regulations: The United States has emphasized that as Japan removes and relaxes regulations, it is essential that industry associations and other private sector organizations are not allowed to substitute private sector regulations (so-called "*min-min kisei*") in their place. Private regulations, including rules on market entry and business operations, approvals, standards, qualifications, inspections, examinations and certification systems can adversely affect business activities. One of the particular concerns that the United States has raised under the Enhanced Initiative is the formal or informal delegation by the Japanese Government of governmental or public policy functions, such as industry standard development, product certifications and entry authorizations, to industry associations and other business-related organizations. Unfortunately, these groups are generally not under an obligation to conduct their deliberations in an open, transparent and non-discriminatory manner or to include foreign firms in their discussions. The United States has asked Japan to refrain from such delegations of government or public policy functions. If there is a demonstrated need for such a delegation of authority, the United States wants to ensure that it is carried out by the associations in an open, transparent and non-discriminatory manner and does not restrict the business activities of firms that are not members of the association.

Informal Management of Industry: Business in Japan is more heavily regulated than in the United States. Much regulation takes place privately and informally through a variety of means: cooperative consultations between a ministry or agency and the affected industry, industry association or other business-related organization; the issuance of "administrative guidance" to companies; and the placement of retired bureaucrats in companies and industry associations through a practice called *amakudari* (literally, "descent from heaven").

ELECTRONIC COMMERCE

As the second largest economy in the world and the nation with the second largest electronics industry in the world after the United States, Japan is an important market for electronic commerce and an important player in international discussions regarding the regulatory framework for global electronic commerce and the Internet. The United States is pleased to see that Japan has, in its policy statements and its regulatory actions to date, endorsed an open, private sector-led and minimally regulated environment for the Internet and electronic commerce.

Following the announcement by President Clinton of the "Framework for Global Electronic Commerce" policy paper in July 1997, the United States entered into discussions with the Japanese Government on the range of e-commerce issues included in that paper. In May 1998, at the Birmingham Summit, President Clinton and then-Prime Minister Hashimoto announced the "U.S.-Japan Joint Statement on Electronic Commerce." In the Joint Statement, the U.S. and Japan agreed that (1) the private sector should lead in the development of electronic commerce; (2) governments should encourage industry self-regulation; (3) government regulation, where necessary, should be minimal, transparent, and predictable; and (4) regulatory frameworks for electronic commerce should be developed on a global basis, rather than nation by nation.

With respect to several specific policy issues, the Joint Statement noted that: (1) privacy, and the protection of confidential consumer data, should be protected through industry self-regulation, with industries responsible for drafting guidelines, enforcement mechanisms, and recourse methodologies; (2) tariffs should not be imposed on electronic commerce, and the United States and Japan will work toward a global understanding in the WTO to preserve a duty-free environment for electronic transmissions; (3) content should be transmitted freely across national borders in response to a user's request; (4) electronic authentication/electronic signatures will be necessary to enforce contracts on the Internet, (5) the U.S. and

Japan support the development of a variety of implementation methods and technologies, led by the private sector; and (6) tax treatment of electronic commerce should be addressed through the on-going discussions at the Organization for Economic Cooperation and Development (OECD).

These principles were echoed in a June 1998 policy paper issued by the Advanced Information and Telecommunications Society Promotion Headquarters, an advisory group to the Prime Minister. The United States will continue to work with Japan on these and other electronic commerce issues (e.g., intellectual property protection on the Internet, consumer protection, and electronic payment systems) and will continue to monitor the development of electronic commerce and the Internet in Japan to ensure that Japanese Government-funded test-bed projects for electronic commerce continue to be fully open to participation by U.S. companies and that standards and technologies for electronic commerce and the Internet remain open and internationally interoperable. The United States will also monitor actions by regulators such as the Ministry of Posts and Telecommunications (e.g. regarding licensing requirements and restrictions on new standards and technologies) to ensure that the most liberal regime possible is promoted.

OTHER BARRIERS

Aerospace

Japan is the largest foreign market for U.S. aircraft and aerospace products, and many Japanese firms have entered into long-term and productive relationships with American aerospace firms. Nonetheless, the United States is continuing to closely monitor several aspects of U.S.-Japan aerospace trade.

Among these are the Japan Defense Agency's general preference for licensing foreign technology for production in Japan, which has resulted in lower U.S. defense aerospace exports than would occur in a more market-driven environment. With respect to commercial aerospace, the United States is monitoring MITI's active role in supporting the domestic aerospace industry, funding feasibility studies for new projects and technologies, and the important role it plays in the apportioning of work among the major Japanese aerospace companies. We also are closely watching the role that the Japan Defense Agency plays in the development of defense aerospace projects, which have resulted in a significant transfer of U.S. aerospace technology to Japan and positioned Japan to become a major supplier of parts and components to foreign aircraft assemblers.

With respect to space systems, the United States is monitoring Japan’s efforts to develop indigenous systems, which may limit the procurement of proven U.S. technology and products. The United States will continue to push for greater access to areas where Japan’s preference for the development of domestic space technologies has been most pronounced, including: space recorders and scientific instruments; sensors for earth resources and astronomical research satellites; and software and ground-based data processing, storage and distribution systems.

The United States will continue to monitor developments to ensure that the Japanese aerospace market remains open and that Japanese Government actions do not discriminate against U.S. aerospace companies.

Autos and Auto Parts

The 1995 U.S.-Japan Automotive Agreement seeks to eliminate market access barriers and significantly expand sales opportunities in this sector. Under the agreement, Japan committed to improve access for foreign vehicle manufacturers, expand opportunities for U.S. original equipment parts manufacturers in Japan and the United States, and eliminate regulations that restrict access for U.S. and other competitive foreign automotive parts suppliers to the Japanese repair market. The agreement includes 17 objective criteria, by which the United States and Japan are to evaluate progress. Coincident with the conclusion of the agreement, the five major Japanese auto manufacturers announced plans to increase purchases of foreign auto parts in Japan, and to expand production of vehicles and major components in the United States.

The Administration attaches high priority to vigorous implementation of the Automotive Agreement because of the importance of this sector to the U.S. economy. To monitor implementation and assess progress achieved under the agreement, an Interagency Enforcement Team, headed by the Office of the U.S. Trade Representative and the Department of Commerce, was established. This team prepares a semi-annual report evaluating progress since the agreement was reached. The fifth and most recent of these reports was issued in August 1998.

The United States remains concerned about the lack of progress toward achieving the agreement's key objectives, although results in some areas have been satisfactory. The United States conveyed specific concerns to Japan during the third annual review of the Automotive Agreement held in San Francisco in October 1998, and its concerns were echoed by representatives from the European Union, Canada, and Australia. The United States called upon Japan to take additional, concrete actions to ensure continuing improvements in market access and sales opportunities in the Japanese automotive market and urged immediate, substantial deregulatory and market-opening action to foster domestic demand-led growth. The U.S. Government followed up on these requests during informal consultations held in February 1999.

Vehicles: Sales in Japan of motor vehicles produced by the “Big Three” U.S. automakers in North America continued to decline, dropping 34.5 percent in 1998, compared to a decline of 20 percent in 1997. This drop well exceeded the 13 percent contraction of the overall Japanese auto market. Moreover, it occurred despite the Big Three’s maintenance of competitive prices in the face of a weak yen.

Foreign access to Japan’s automotive distribution network remains a problem. U.S. auto companies continue to seek high-quality, high-volume dealerships, and are working to strengthen their dealership networks. However, some Japanese dealers continue to have reservations about carrying competing foreign vehicles for fear that doing so would compromise their relationships with Japanese manufacturers and thereby jeopardize their business, despite Japanese Government steps to ensure that dealers understand that they are free to carry the products of competing manufacturers. While the Big Three U.S. automakers have added a total of 192 new outlets through direct franchise agreements with Japanese dealers since 1995, the number of additional new dealerships diminishing markedly over the past year.

Auto Parts: Exports of U.S.-made auto parts to Japan fell 7.5 percent in 1998, compared with an average 20 percent annual increase between 1993-97. This is the first decline since the conclusion of the agreement in 1995. Sales of original equipment auto parts to Japan remain low, and, concerns are mounting that recent declines in orders for original equipment parts will push these numbers down further still. Moreover, despite large percentage increases, actual U.S. after market parts sales to Japanese auto companies in the U.S. and Japanese auto companies in Japan remain low.

Japanese auto manufacturers have made considerable progress in implementing the voluntary global business plans they announced when the Automotive Agreement was signed. They have boosted production of passenger cars, light trucks, and a range of components, including engines and transmissions, in the United States. These increases have led to new sales opportunities for U.S. suppliers, and increased employment opportunities for U.S. workers.

Recent trends in bilateral automotive trade have underscored U.S. Government concerns about progress under the Agreement. To address these concerns, the United States has strongly urged Japan to undertake additional market opening and deregulatory measures in this sector. At the annual review of the Automotive Agreement in October 1998, the United States presented 11 new concrete proposals for achieving further progress. To strengthen dealerships, which are key channels to the automotive distribution system, the United States proposed that Japan streamline new vehicle registration in Japan and that it consider ways to tailor incentives offered by the Ministry of International Trade and Industry, the Japan Export-Import Bank, and the Japan Development Bank to make them more useful to foreign companies. The United States requested that Japan work with the United States to improve the efficacy of its import promotion programs. In addition, while noting that it shares the Japanese Government's environmental objectives in developing new fuel economy regulations – which Japan plans to adopt this year – the U.S. Government requested that Japan ensure that the new standards be transparent and non-discriminatory.

Among the other proposals presented by the U.S. Government were (1) eliminating unnecessary requirements of the *"shaken"* inspection and repair systems to allow more garages, particularly independent garages (which are more inclined to use foreign auto parts)--to conduct inspections and repairs; (2) removing brakes and other components from the disassembly repair regulations (critical parts list); (3) allowing mechanics working in specialized garages to be certified in the types of repair conducted by that garage (to allow a progression of expertise and skill in mechanic certification), which would encourage the development of specialized garages, which were created under the agreement to encourage the development of an independent repair market; (4) reviewing policies regarding development and implementation of regulations to prevent Japanese trade associations and other vested interests from undermining the intended impact of deregulation; and (5) encouraging the Japanese automakers to provide to the U.S. Government with updated business plans.

The United States also requested that Japan continue to support JETRO programs aimed at promoting imports of foreign auto parts and that the Ministry of Transport not reinstitute its proposal for establishing an auto parts recall system. In addition, the U.S. Government requested that Japan sign the 1998 Global Agreement for the harmonization of technical regulations regarding motor vehicle safety, emissions, energy conservation, and theft prevention.

Informal consultations on these automotive issues were held in Tokyo in February 1999. During these consultations, Japan informed that United States that it planned to take action to streamline the new vehicle registration system this year, including establishment of a "one stop shop" for all new vehicle registration procedures by 2000. The Japanese Government also agreed to consult with individual U.S. and other foreign automakers on ways to adapt the financial incentive programs it has established to make them more valuable to these companies and with the U.S. Government (and the EU) on the new fuel economy standards. On auto parts, the Japanese Government agreed to study jointly with the United States areas for possible deregulation of the *shaken* system and informed the United States of its intention to further liberalize the certified mechanics system by creating another class of special certified mechanics, a move taken in response to U.S. requests. Japan said it does not plan to go forward with an auto parts recall system proposal this year but that it is prepared to sign the 1998 Global Agreement on harmonization if vehicle standards, although the process may be delayed if it is determined that legislative approval is required.

The United States will continue to closely monitor Japan's implementation of the Automotive Agreement and to press Japan at all levels to take concrete steps to achieve additional progress under the agreement.

Civil Aviation

On March 14, 1998, Transportation Secretary Slater and then-Japanese Transport Minister Fujii signed a Memorandum of Understanding (MOU) which promises to significantly expand civil air services between the United States and Japan while setting the stage for further liberalization in the future. The agreement removed all restrictions on the U.S.-Japan services of so-called "incumbent" carriers -- United Airlines, Northwest Airlines, and Federal Express for the U.S. side – that operate from any U.S. gateway point to any point in Japan and beyond Japan to third countries without limitation on the number of flights. It also allowed the United States to designate two additional passenger carriers to serve Japan, one immediately (Trans World Airlines) and another airline in two years.

Moreover, U.S. "non-incumbent" combination carriers now serving Japan -- American Airlines, Delta Air Lines and Continental Airlines along with the two newcomers -- can add up to 90 more weekly round-trip flights to their current total of 46, nearly tripling access to Japan's huge aviation market. (Combination carriers carry both passengers and cargo.) U.S. non-incumbent all-cargo carriers United Parcel Service and Polar Air Cargo gained new operational flexibility, which create valuable new opportunities to transport cargo to destinations beyond Japan. In four years, another U.S. all-cargo carrier can enter the market.

The MOU allows, for the first time, extensive code-sharing between U.S. carriers, U.S. and Japanese carriers, and U.S. and third-country carriers on services between the United States and Japan and beyond Japan. Other new services also are being permitted, including an increase in charters from 400 to 600 flights per year in two years and eventually rising to 800 flights. Distribution and pricing provisions of the MOU promote competition, and Japan has guaranteed U.S. carriers fair and equal opportunity to contract with wholesalers and travel agents and to set up enterprises to market their services directly to consumers.

While the agreement is liberalizing U.S.- Japan air services, additional benefits will take effect automatically in four years if a fully liberalized agreement is not in place by then. The Administration is committed to seek further liberalization in line with its global policy of "open skies" to minimize government interference in civil aviation and to provide full and equal opportunities for U.S. and foreign passenger and cargo carriers to compete in each other's market.

The United States estimates that, as a result of the agreement, U.S. passengers will enjoy gains of $1.2 billion over four years, measured in terms of additional service in a more competitive market. U.S. carriers are expected to earn additional revenue of just over $4 billion over four years, due in part to an anticipated increase in U.S.-carrier market share. In addition, U.S. exports of aviation services should have a net increase of almost $4 billion over the next four years.

Implementation of the MOU proceeded smoothly over the balance of 1998. Although a recession in Japan and much of Asia slowed an anticipated expansion of U.S. air traffic, due to the new agreement, U.S. carriers took full advantage of their new rights. Several U.S. cities obtained their first non-stop air service to Japan and frequencies on existing routes increased. A Japanese carrier formed a codeshare alliance with a U.S. carrier for the first time and two U.S. carriers began codesharing with each other on international service to and beyond Japan. More codeshare arrangements are possible in the future.. Disagreement over the interpretation of third-country codeshare rights in the MOU temporarily delayed

Japan's consideration of the codeshare application between a U.S. carrier and a third-country carrier to serve Japan, but the issue was eventually resolved favorably.

Narita Airport Issue

In 1994, U.S. carriers serving Tokyo's Narita Airport, with U.S. and Japanese Government involvement, agreed with the Airport on a ten-year Master Plan for renovating the older Narita terminal used by most U.S. airlines. The rebuilding project was to be gradual in order to minimize disruption to our carriers. In the Spring of 1998, Narita Airport officials unexpectedly announced that they were seriously considering a major modification of the final phase of the Master Plan, which would have seriously affected the future commercial interests of a major U.S. carrier. Following several meetings involving officials of the U.S. carrier, Narita Airport Authority, the United States and Japan, the Airport and the U.S. carrier, in March 1999, reached a fundamental understanding over modifying the final phase of the 1994 Master Plan. The United States welcomes the understanding and continues to monitor the implementation of the Master Plan to support the commercial interests of U.S. carriers.

Direct Marketing

In recent years direct marketing (a.k.a. direct selling) has become an increasingly popular way to sell housewares, personal care products, and health supplements in Japan at a discount compared to prices in local retail stores and has proved to be an effective means of distributing U.S. exports throughout Japan. It also is a way by which local distributors, who are largely part-time independent workers, such as housewives and older people, can supplement their family incomes. Direct selling in Japan was estimated to account for $30.2 billion in sales and employed 2.5 million distributors in 1997. MITI regulates these activities through enforcement of consumer protection laws that prohibit fraudulent or misleading sales practices.

In 1998, a Japanese consumer organization alleged that a leading U.S. direct selling company in Japan was engaged in questionable sales practices based on complaints it had received. However, the number of complaints was very few, the allegations largely unsubstantiated and, in any case, unwarranted since the company in question was complying fully with Japanese laws regulating direct selling activities. The United States expressed concern to Japan regarding this issue, after which harassment of the U.S. firm subsided. Nonetheless, the firm suffered sales losses as a result of the allegations and was forced to reorganize its local sales force at considerable expense. The U.S. Government is continuing to consult with industry and to monitor that situation closely.

Electrical Utilities

The cost of electric power in Japan is the highest in the industrialized world. The United States believes that one of the most effective ways for Japan to reduce costs in this sector would be the introduction of genuine competition into non-fuel procurement. Non-fuel procurement is presently valued at approximately $25 billion annually, with imports representing only about 5 percent of this total, considerably lower than the foreign share of other developed markets. Some Japanese utilities are making noteworthy progress in this area, but with others lagging behind, the United States continues to urge the utilities to internationalize their procurement.

Among the barriers faced by foreign firms are standards and specifications used by Japanese utility companies that often discriminate against or otherwise disproportionately affect foreign suppliers. Particular problems in this regard are the use of narrow, dimension-based technical standards rather than performance-based technical standards; the lack of harmonization with international standards; and requirements that suppliers provide detailed information on standards and specifications for spare parts originating from outside sources. For example, although the Japanese Government has taken gradual steps toward performance-based standards since March 1997, the utilities' purchasing practices have remained unchanged because the utilities' procurement manuals have not been revised to reflect the new performance-based standards.

The United States also seeks greater transparency and fairness in the procurement process. Expensive and time-consuming procedures are generally required for a company to be added to the list of designated suppliers for a particular utility company, including requests that suppliers submit detailed information on proprietary manufacturing processes. Equal access to procurement information also is a problem, and foreign firms often do not learn about procurements until after they have been awarded. Moreover, U.S. firms have expressed concerns that the periods allocated for bid submission and product delivery are too short and that, while many utilities make procurement information available in English, bid documents and related technical documents must be submitted exclusively in Japanese.

In some cases, Japanese utilities have taken concrete steps to streamline and simplify their procurement standards and adopt international standards. In addition, Japanese utilities have taken a more active role in developing relations with potential U.S. suppliers. The U.S. Power Equipment/Services Executive Mission (May 18-22, 1998), organized by the Commerce Department, received strong support from the twelve Japanese electric power utilities and provided the 23 U.S. company participants an opportunity to meet all twelve utilities and to make presentations on their products and services. Through the New Orleans Association (NOA) -- a forum designed to help U.S. suppliers of power generation, transmission and distribution equipment gain access to the Japanese power equipment market -- utilities have made strong efforts to explain their procurement procedures, learn about U.S. products, and establish business relationships with U.S. suppliers. The number of utilities that publish procurement information in English on their Internet home pages has been increasing and some companies have sent their buyers to U.S. trade shows. Moreover, some utilities have assisted U.S. firms in developing relations with distributors and service companies to facilitate the procurement and after-sales service process. Although representing only a small part of non-fuel procurement, utilities in Japan are also making notable progress in expanding foreign procurement of telecommunications products.

Flat Glass

Flat glass is a classic example of Japan's resistance to open markets. Despite their extensive experience and success in other countries and many years of active efforts in Japan, U.S. flat glass manufacturers have failed to break the stranglehold of Japan's flat glass oligopoly.

Valued at $4.5 billion in 1998, Japan's flat glass market is the world's second largest. Three domestic producers continue to dominate the market they have shared among themselves for more than 30 years. They exert tight control of distribution channels in many ways, including majority ownership, equity and financing ties, employee exchanges, and purchasing quotas. At the same time, they change prices, capacity, and product mix in virtual lockstep, thereby maintaining constant market shares. Asahi Flat Glass controls close to half of the market, Nippon Sheet roughly a third, and Central Glass about a fifth.

In January 1995, the United States and Japan concluded an agreement to open Japan's flat glass market to foreign suppliers. Pursuant to that agreement, Japanese glass distributors publicly stated that they would diversify supply sources to include competitive foreign glass suppliers, and that they would not discriminate among suppliers based on capital affiliation. Japanese glassmakers expressed support for diversifying their *de facto* exclusive distribution networks. The Government of Japan also committed itself to remove discrimination in public works projects, and to promote the use of insulated and safety glass, where American companies have superior products. An annual survey is undertaken under the agreement to assess the openness of the distribution system.

The agreement has helped American firms to a limited extent. For example, it induced Japan to feature American glass in a number of high-profile public construction projects. In addition, it obligated Japan to adopt new energy conservation standards that will raise the demand for insulated glass. U.S. exports of this type of glass have increased significantly in 1998, albeit from a low base.

But the basic problem remains the same: U.S. glass manufacturers still have a minuscule share of the Japanese flat glass market, despite the fact that Japanese companies and distributors readily acknowledge the high quality and lower cost of American glass. U.S. firms report that their market share of construction- related flat glass has not increased over the last four years. Japan's Ministry of International Trade and Industry (MITI) has claimed that the United States is the market leader in imported glass, with a steady increase in market share during the same period. Their data, however, include automotive and other specialty glass imports, such as glass for liquid crystal display (LCD). U.S. industry points out that these products are irrelevant to the problems that gave rise to the agreement, because they are sold through completely separate distribution systems. MITI also counts imports from Japanese affiliates in U.S. market share estimates.

In total, foreign companies supply about seven percent of Japan's flat glass market; in most other major industrial markets, including the United States and the EU, the market share of foreign-owned companies (via imports and in-country production) is more than five times the level in Japan. Foreign subsidiaries of Japanese manufacturers also supply Japan's flat glass market. Because these firms have privileged access to their parent companies' distribution systems, their sales to Japan reveal little about the market's openness.

The domination by domestic flat glass manufacturers of local distributors shows no sign of abating. Indeed, there is evidence that it is increasing. Manufacturers are using Japan's recession and the resulting tight credit market to tighten their financial hold on the most important glass distributors. In some cases, they have assigned their own employees to run the distributorships. Moreover, certain Japanese manufacturers appear to be using aggressive pricing strategies to dissuade distributors from handling foreign glass.

Concerns about inadequate progress prompted the United States in the Spring of 1998 to seek an update of the 1993 JFTC survey of the flat glass industry and Japanese Government participation in an initiative to strengthen the Antimonopoly Law compliance manuals and programs of the Japanese flat glass manufacturers and distributors. Japan accepted the first proposal. The survey is underway, with completion expected by Spring 1999. Japan rejected the compliance initiative, prompting the United States to provide the JFTC and MITI with an in-depth analysis of the flaws in the Antimonopoly Law compliance manuals and programs of two Japanese flat glass manufacturers. In response, Japan indicated that the JFTC's upcoming survey of the sector would examine this issue.

In January 1999, the United States presented MITI with new proposals to engage it more directly in efforts to guarantee the agreement's success. Its proposals included MITI consultations with distributors; a MITI consultation desk to deal with market access complaints; a joint examination of equity links between manufacturers and distributors; and industry/government talks to facilitate dialogue on Japan's flat glass market. The United States and Japan continue to discuss these ideas.

Paper and Paper Products

In April 1992, the United States and Japan signed "Measures to Increase Market Access for Paper Products," a five-year agreement aimed at substantially increasing access to Japan's market for paper products. In the agreement, the Japanese Government committed itself to encourage companies to increase imports of competitive foreign paper products; introduce transparent corporate procurement guidelines; encourage key end-user segments of the Japanese market to use foreign paper; and introduce Antimonopoly Law compliance programs. The Japanese Government also promised to provide assistance to foreign paper suppliers in the form of market information and low-interest loans. The agreement expired in April 1997.

To date, there has been no meaningful increase in Japanese imports of paper and paperboard products and the level of import penetration for paper and paperboard products in Japan remains the smallest in the industrialized world. Despite continued U.S. efforts to press the Japanese Government to open the paper market, including the citation of market access problems in Japan in the sector as a practice that may warrant future identification as a “priority” foreign country practice under Super 301 provisions of U.S. trade law, the Japanese Government has insisted that it does not maintain barriers to market access in this sector. A key problem, according to U.S. producers, is weak enforcement of Japan’s Antimonopoly Law and the existence of exclusionary business practices. U.S. negotiators have discussed competition issues affecting this sector under the Enhanced Initiative’s Structural Issues Working Group, which takes up Antimonopoly Law enforcement and competition policy.

The United States has also sought Japan’s full participation in the APEC forest products sectoral liberalization initiative that envisages, among other things, the accelerated phase out of tariffs on paper and paperboard products in Japan. At the November 1998 APEC Leaders' Meeting, Japan refused to participate in cutting tariffs in this sector, but committed with other APEC nations to negotiate tariff reductions (in this and seven other sectors) in the WTO. The United States will press Japan to play a constructive role in concluding agreement at the WTO in 1999, with a view towards eliminating wood product tariffs in the 2002-2004 time frame.

Consumer Photographic Film and Paper

Foreign photographic film and paper manufacturers face a variety of obstacles that restrict access and sales of their products in Japan, the second largest film market in the world. These obstacles have prevented foreign firms from gaining access to the main distribution channels for film.

After an extensive investigation, initiated in response to a petition by Eastman Kodak Co. (Kodak), the USTR in June 1996 made a determination of unreasonable practices by the Japanese Government with respect to the sale and distribution of consumer photographic materials in Japan. Its investigation showed that the Japanese Government built, supported, and tolerated a market structure that impedes U.S. exports of consumer photographic materials to Japan, and in which restrictive business practices occur that also obstruct exports of these products to Japan.

To address these concerns, the Administration initiated dispute settlement procedures against Japan in the World Trade Organization (WTO), alleging that Japanese Government measures were inconsistent with the General Agreement on Tariffs and Trade (GATT). The European Union and Mexico joined the United States as third parties to the case.

Japan

The WTO Panel on film issued its final report on January 30, 1998, and failed to find Japan in violation of its GATT obligations. The United States expressed serious disappointment with the findings, stating that the interim report sidestepped the core issues raised by the United States, particularly the combined effects of the numerous measures Japan imposed to protect its market.

On February 3, 1998, the Administration established an interagency monitoring and enforcement committee, co-chaired by USTR and the Department of Commerce, to review implementation of formal representations made by the Japanese Government to the WTO about efforts to ensure Japan's openness to imports of photographic film and paper. The monitoring and enforcement committee surveyed the Japanese photographic film and paper market and assessed information and data obtained from U.S. and other foreign film manufacturers and the Japanese Government. The committee issued its first semi-annual report in August 1998.

The report outlined distinctly different trends in the availability of foreign film in the two main segments of the market. Availability has declined slightly in the traditional photo-specialty stores, which comprise nearly half of the Japanese film market by sales volume. Competition in this market segment continues to be less robust. However, the report found that the availability of foreign film has doubled over the last three years in "non-traditional" outlets, such as supermarkets, department and convenience stores, and other non photo-specialty stores. These stores represent a market segment that is relatively more open and where competition is more vigorous than in the rest of the photographic materials market.

The report attributed the improved access in non-traditional stores to several factors, such as the heightened focus on this issue over the past few years as a result of U.S. trade actions, nascent structural changes in Japan's distribution system, and initial steps by the Japanese Government to address exclusionary business practices in the film sector. Continued and active efforts by Kodak and other foreign film manufacturers to market their products in Japan also have played a role. However, the continued use by Fuji Film Co. (Fuji) and its primary wholesalers of unreasonable business practices that exclude its competitors has contributed to the lack of improvement in access to the traditional photo-specialty stores, which remain a key film distribution channel.

The report also cited specific areas where additional action by the Ministry of International Trade and Industry (MITI) and the Japan Fair Trade Commission (JFTC) is warranted. These include steps to improve dissemination of MITI and JFTC guidelines on business and distribution practices, ensure that new measures regulating large stores are not allowed unreasonably to restrict competition or to favor small and medium-sized stores, and intensify JFTC monitoring of Fuji activities, especially tying arrangements and retaliatory threats by Fuji against Japanese retailers that promote foreign brands or photographic film or paper.

On September 4, 1998, the JFTC issued an official "warning" to the Photosensitive Material Industry Association, the Japanese film industry's primary industry association, that the Association's information exchange activities may constitute a violation of the Antimonopoly Law. The JFTC found that the association's collection, analysis and dissemination of information among its membership regarding the value and volume of individual firms' production and shipment of photographic materials may have resulted in acts of restricting or constraining competition. The JFTC warned the association not to engage in such types of information collection and exchange in the future.

In preparation for its next semi-annual film monitoring report, the monitoring and enforcement committee continues closely to scrutinize foreign access to Japan's film market and the Japanese Government's efforts to open this market in accordance with its WTO representations. The committee will release its next semi-annual film monitoring report in the Spring of 1999.

Sea Transport and Freight

American carriers serving Japanese ports have encountered for many years a restrictive, inefficient and discriminatory system of port transportation services. Following extensive research and deliberation, the Federal Maritime Commission (FMC) determined in February 1997 that Japan maintained unfair shipping practices and proposed fines against Japanese ocean freight operators. The FMC delayed implementation of the fines after the U.S. and Japan reached an understanding in April 1997, under which the Japanese Government pledged to grant foreign carriers port transport licenses and, at the same time, to reform the prior consultation system, which allocates work on the waterfront and requires carriers to obtain approval for any change in their vessel operations.

Japan's failure to carry out these reforms by July 31, 1997 resulted in FMC implementation of the fines on September 4, 1997. The two governments reached an understanding in October 1997, which was recognized in an exchange of letters between Secretary of State Albright and Japanese Ambassador Saito. The understanding noted two agreements among the Japanese Government, foreign ship owners, Japanese ship owners and the Japanese Harbor Transport Association, in which they committed to improve the current prior consultation system, and to establish an alternative method to the current prior consultation system. The Ministry of Transport also agreed to approve foreign carriers' applications for harbor services licenses if those applications satisfied the requirements set out in the April understanding. The United States believes that these actions provide a solid foundation for reform of Japanese port practices. Sanctions were suspended on November 13, 1997. The United States continues to vigorously monitor the agreement to ensure its full implementation.

Significant deregulation of port transport services is still needed, particularly elimination of the supply-demand adjustment requirement and rules that underpin allocation of port transport work. The United States has asked that this deregulation be completed by December 1998. As of this writing, the Harbor Transport Subcommittee of the Ministry of Transport, which was tasked with preparing recommendations for deregulation, had published its interim report. The United States submitted formal comments on this report on January 22, 1999. While appreciative of the Ministry of Transport's solicitation of public comments on the interim report, the United States expressed strong concerns about the report's failure to promote real competition on the docks. Key issues of concern are the report's failure to address restrictive licensing requirements and to recommend the development of an improved/alternative prior consultation process. The United States will closely monitor the work of the Harbor Transport Subcommittee over the next few months, as it completes its task of putting together a list of recommendations for meaningful deregulation of Japan's ports.

Motorcycles

Japan maintains two restrictions on the use of large-class motorcycles that artificially limit the market for large-class motorcycles in Japan, adversely affecting U.S. exports. These restrictions, which are contained in the Road Traffic Law, include (1) the prohibition of tandem riding (i.e., carrying a passenger) on motorways and (2) the differential, lower speed limit applied to motorcycles. The United States has provided evidence to Japan demonstrating that these restrictions are unnecessary and likely to detract from highway safety.

On the tandem riding issue, research shows that motorways are safer than ordinary roads, and that passenger-carrying motorcycles have a much better safety record than single-rider motorcycles. Thus, because the current law requires motorcycles which passengers to travel on less-safe non-motorway roads, it increases accident risk. On the differential speed limit issue, a large volume of traffic research shows that accident risks are increased for vehicles traveling either faster or lower than the rest of the traffic stream. Thus, by requiring motorcycles to observe a lower speed limit than automobiles, current law places them at greater risk of an accident.

In the 1960s, most motorcycles in Japan were small and now well-suited for carrying a passenger at motorway speeds. Today, touring motorcycles and other large-class motorcycles are designed and built to carry a passenger safety at motorway speeds. Repealing these two restrictions would improve, not reduce, highway safety in Japan and would contribute to a more open Japanese market.

Semiconductors

In August 1996, the United States and Japan announced a third arrangement on semiconductor trade. This arrangement, like the 1986 and 1991 semiconductor arrangements that preceded it, was negotiated to ensure U.S. access to the Japanese semiconductor market. The 1996 measures represent an innovative multi-dimensional approach to a sector in which market access is promoted not only through government-level discussion but also through concrete industry-level partnership. Under the current agreement, U.S. success in the Japanese market, and cooperation between the U.S. and Japanese semiconductor and microelectronic industries, have continued to increase.

The heart of the new agreement is an industry-to-industry accord which provides a continuation of the industry-level cooperative activities to expand market access in Japan that existed under the 1991 agreement, and an expansion of that cooperation to new areas. U.S. and Japanese semiconductor industries, as well as semiconductor industries of other economies committed to tariff-free trade in semiconductors, meet annually in the World Semiconductor Council (WSC). Included within the Council's scope are both a continuation of existing user-supplier cooperative activities (in the area of semiconductor technologies for telecommunications, automotive and emerging applications) and a range of new supplier-supplier cooperative activities (in such areas as standards, intellectual property, environmental and safety issues, and others). The United States and Japan were the founding members of the WSC; Korea and the European Union were invited to join in 1997, and Taiwan will participate starting in 1999.

Moreover, the measures, through a bilateral government statement, also established a multilateral Government Consultative Mechanism, essentially to oversee and interact with the Semiconductor Council. Governments whose industries have joined the Council participate in these annual consultations, at which members of the Council report on the Council’s activities and present Council recommendations on policy issues to the governments.

The measures also, through the bilateral government statement, established the "Global Governmental Forum" (GGF). Governments of all major semiconductor-producing nations and economies are invited to participate in this forum, which meets annually to discuss policy issues of interest to the semiconductor industry (e.g., trade and investment liberalization, environmental issues, worker health and safety, intellectual property protection, and other matters). The second annual GGF was held in Washington in January 1998, with the United States, Japan, the EU, Korea, and Chinese Taipei attending.

Finally, after the announcement of the new arrangement on semiconductors, the Semiconductor Industry Association (SIA) and the Electronics Industries Association of Japan (EIAJ) announced an industry-level agreement on anti-dumping, which reaffirmed the need to avoid injurious dumping through effective and expeditious antidumping measures consistent with the GATT / WTO Antidumping Agreement. Consistent with this agreement, individual semiconductor producing companies are continuing to collect and maintain specified data on a voluntary basis, which can be produced in an antidumping investigation on an expedited basis.

The foreign share of the Japanese semiconductor market has continued its upward trend under the 1996 agreement. Foreign market share averaged 27.5 percent in 1996, and 33.3 percent in 1997, and reached 33.9 percent in the second quarter of 1998. This compares with a foreign market share of less than 15 percent when the 1991 agreement was negotiated. This progress has been made possible by the concerted efforts made by all parties, most notably the efforts U.S. semiconductor manufacturers have made to adapt their products to the needs of the Japanese market, and the efforts Japanese semiconductor users have made to open up their procurement practices. The Administration will continue to work closely with U.S. industry and the Japanese Government to ensure that the commitments made in the 1996 semiconductor agreement are fully and successfully implemented.

Steel

The global financial crisis and accompanying slowdowns in building and manufacturing have led to a catastrophic drop in demand for steel in depressed regions, particularly in Asia. This, combined with production overcapacity in the U.S. steel sector, a booming U.S. economy, favorable exchange rates, and desperate foreign sellers, has resulted in a massive surge in steel imports to the United States.

Japan is the single largest steel exporter to the United States. In 1998, steel imports from Japan increased 163 percent by volume over 1997. Japanese exports of hot-rolled carbon sheet steel to the United States rose 460 percent in the first eleven months of 1998.

In January 1999, the Administration outlined a steel action plan ("A Report to Congress on a Comprehensive Plan for Responding to the Increase in Steel Imports"). With respect to Japan in the report and in the subsequent statement, the Administration has raised the possibility of self-initiated remedial action under U.S. trade law if steel imports from Japan do not return to 1997 pre-crisis levels.

MITI has indicated that steel exports from Japan are already being significantly reduced in large part as a result of a preliminary finding in its anti-dumping case on hot-rolled steel from Japan on a voluntary basis. MITI and the Ministry of Finance have announced figures showing Japanese steel shipments of 367,000 metric tons for December 1998. This represents almost a 21 percent decline from their figure for November 1998 and a 15 percent decline from the figure for December 1997. However, the Administration has made it clear that further significant reductions are necessary to reach an aggregate pre-crisis level.

The Administration is vigorously enforcing U.S. anti-dumping laws and is considering options for further actions, while fairly determining the validity of steel dumping allegations. Any further actions by the United States would be consistent with WTO obligations. The President and all U.S. Government agencies engaged in the steel issue are committed to pursuing objective findings and maintaining and opening fair and free markets in a global economy.

Japan

U.S. steel producers have expressed concerns that Japanese steel companies may be engaging in anticompetitive practices. With respect to Japan's domestic market, it is alleged that Japan's five integrated producers discuss and coordinate output, pricing, and market allocation goals--with the knowledge of Japan's Ministry of International Trade and Industry. In addition, it is alleged that Japanese mills have entered into a series of arrangements with foreign counterparts to regulate bilateral steel trade. It is believed that these arrangements, as well as tight control by major integrated producers over steel distribution channels in a manner which strongly discourages imports, explain the fact that the market shares of Japan's five large mills have remained absolutely stable over the last three decades. The Administration has expressed concerns about these allegations to Japanese officials and has urged them to vigorously and effectively deal with any such activities. The Administration will continue to actively review any evidence of anticompetitive activity or market access barriers in the steel sector.

KAZAKHSTAN

In 1998, the U.S. trade deficit with Kazakhstan was $66 million, a decrease in the trade balance of $207 million from the U.S. trade surplus of $142 million in 1997. U.S. merchandise exports to Kazakhstan were approximately $103 million, a decrease of $155 million (60.1 percent) from the level of U.S. exports to Kazakhstan in 1997. Kazakhstan was the United States' 109th largest export market in 1998. U.S. imports from Kazakhstan were about $169 million in 1998, an increase of
$52 million (45.0 percent) from the level of imports in1997. The stock of U.S. foreign direct investment (FDI) in Kazakhstan in 1997 was $1.5 billion, an increase of over 5.1 percent from the level of U.S. FDI in 1996.

Overview

Kazakhstan is in the midst of its transition to a market economy. Key reforms underway include completing Kazakhstan's privatization program, creating a viable securities market, pension reform, modifying its trade regime so that Kazakhstan can join the World Trade Organization (WTO), consolidating the banking sector and improving Kazakhstan's investment climate.

Over 100 American firms have established offices in Almaty, Kazakhstan's former capital and largest city. Major U.S. investors include Chevron, Mobil, Philip Morris, Oryx, and AES.
The move of the capital to Astana, continued personnel changes in government, and a very cumbersome bureaucracy have increased obstacles to doing business in Kazakhstan in the past year.

The US-Kazakhstan bilateral trade agreement, which came into force in 1993, grants reciprocal most-favored nation (now known as "Normal Trade Relations") treatment. A bilateral investment treaty came into force in January 1994. In addition, an avoidance of double taxation treaty came into force in December 1996. U.S. firms have noted that Kazakhstan implementation of the double taxation treaty has been spotty due to the GOK's lack of technical expertise to implement the terms of the agreement.

IMPORT POLICIES

Customs-Duties and Taxes

The average weighted import tariff in Kazakhstan is approximately 10 percent. This is largely due to the fact that trade with Russia, Kazakhstan's major trade partner, is duty-free pursuant to a customs union agreement. The GOK is contemplating instituting an industrial policy, which could include quotas and tariffs on select imports to protect local producers. In January 1999, in reaction to the August devaluation in Russia and the consequent influx of inexpensive food products, the GOK temporarily banned the import of a wide range of Russian food products.

Merchandise from non-CIS countries is subject to a value-added tax (VAT) of 20 percent at the time of importation. Goods exported from CIS countries to Kazakhstan are generally taxed at the point of production and are therefore not taxed again upon importation; however, Kazakhstan is negotiating agreements with individual CIS countries to switch to a system of VAT collection at the point of destination (that is, on importation). In addition, customs levies a 0.2 percent import processing fee, based on the declared value of the item. In July 1998, the GOK made all pharmaceutical imports exempt from VAT.

Kazakhstan

In April 1997, the Ministry of Finance announced that enterprises that import materials used in industrial processing will be granted a three-month delay in paying VAT taxes. Of these companies, those that regularly import such items may be granted a one-year delay in paying VAT taxes.

According to the February 1997 law on state support for direct investment, imported goods - - equipment, raw and other materials - - can qualify for complete or partial exemption of duty if the goods are used as an investment in designated "priority sectors" of the economy. Priority sectors include infrastructure, agriculture, tourism and all imported goods related to activity connected with the construction of the new Kazakhstani capital at Astana.

Certain goods that are imported temporarily are exempt from payment of customs duties and taxes. These include transport vehicles, professional and office equipment, goods imported for demonstration purposes, shipping containers, and advertising materials. Such goods may remain in Kazakhstan for one year duty-free. With some exceptions, all other goods may be imported temporarily for a period of two years under a partial duty exemption. The amount of duty payable is equivalent to three percent of the duty chargeable for each calendar month. Goods not eligible for full or partial duty exemption are food products, industrial waste, and consumable materials. U.S. firms report that, in some cases, violations of these provisions by importers have led to confiscation of assets.

Kazakhstan formed a customs union with Russia and Belarus in January 1995 with the Kyrgyz Republic formally joining in 1997 and Tajikistan joining in 1998. Under the provisions of the customs union, trade between these five countries is free of customs duties. The Kyrgyz Republic's accession to the WTO has complicated the future of this customs union.

Customs Procedures

Kazakhstan's customs valuation rules largely conform to the GATT valuation agreement, and its tariff nomenclature is patterned after the WTO's harmonized system.

Article 22 of the 1994 foreign investment law exempts from customs duties property imported by a foreign investor for the purpose of contributing it to the charter fund of a "foreign-shared enterprise" (defined as a Kazakhstan legal entity, such as a limited liability company, in which the foreign investor has an ownership interest). However, varying interpretations of article 22 following the July 1997 changes to the foreign investment law have reduced investor confidence in this article.

U.S. companies have identified as an added cost of doing business in Kazakhstan the cost of customs declarations, as well as a customs' requirement that imported goods be placed in a temporary storage warehouse pending customs clearance. Poor implementation of pre-arrival and periodic declarations has been an additional added cost to businesses. U.S. companies have also complained of a new requirement that they obtain a "transaction passport" to clear imported goods through customs. Ostensibly designed to stem the outflow of capital, the state customs department and the national bank of Kazakhstan are now requiring importers to show copies of contracts and other documentation to prove the legitimacy and verify pricing on import/export transactions.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Government observance of old soviet standards, testing, labeling, and certification requirements is uneven. Such requirements constitute a barrier when they differ significantly from U.S. and western standards. In November 1996, the U.S. National Institute of Standards and Technology signed a memorandum of understanding with the Kazakhstan Government to bring Kazakhstan metrology methods in conformity with international rules and practices.

GOVERNMENT PROCUREMENT

During ongoing negotiations to accede to the WTO, Kazakhstan declared its intention to accede to the WTO's agreement on government procurement. It is anticipated that the framework for government procurement now being developed will provide foreign bidders with enhanced access to government tenders, assurances of national and most-favored nation treatment, and international standards of transparency and public accountability.

LACK OF INTELLECTUAL PROPERTY PROTECTION

The bilateral trade agreement between the United States and Kazakhstan incorporates provisions on the protection of intellectual property rights (IPR). In anticipation of this agreement, Kazakhstan acceded to the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty (PCT) and the Madrid agreement concerning the international registration of marks and joined WIPO. Kazakhstan recently became a member of the Berne Convention for the Protection of Literary and Artistic Work. It has not, however, joined the Geneva Phonograms Convention. Kazakhstan has signed but has not ratified the 1997 WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). In June 1996, Kazakhstan enacted a new law on copyright protection which includes sanctions for infringement.

Under the bilateral trade agreement, Kazakhstan agreed to bring its IPR regime up to world standards. Kazakhstan has fulfilled most of its obligations under the trade agreement, but still has several steps to take. For example, under the bilateral trade agreement, Kazakhstan is obligated to provide protection for U.S. sound recordings and provide (retroactive) protection for works and sound recordings predating May 1973.

Piracy of U.S. movies, computer software and audio-cassettes in Kazakhstan is reportedly extensive. To date, however, there have been no known enforcement actions taken against anyone for IPR violations.

INVESTMENT BARRIERS

There is a severe lack of capital in domestic enterprises for servicing loans and to meet equity percentages in joint ventures. In addition, in accordance with the constitution, foreign firms currently cannot purchase land. Firms can obtain leasing rights to land only through a domestic partner for a maximum of 99 years. Kazakhstan authorities have also often insisted that U.S. firms invest in social programs for local communities. U.S. businesses report that bureaucracy and corruption have increased in the past year, adding to costs of doing business.

Foreign insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstan companies. The total registered capital of banks with foreign participation cannot be more than 25 percent of the total registered capital of all banks in Kazakhstan.

OTHER BARRIERS

There are other structural barriers including a weak system of business law, a shortage of domestic capital to pay for U.S. goods, lack of an effective judicial process for breach-of-contract resolution, logistical difficulties of serving the Kazakhstan market, and an unwieldy and corrupt government bureaucracy.

KENYA

In 1998, the U.S. trade surplus with Kenya was $101 million, a decrease in the trade balance of $11 million from the U.S. trade surplus of $112 million in 1997. U.S. merchandise exports to Kenya were approximately $199 million, a decrease of $27 million (11.8 percent) from the level of U.S. exports to Kenya in 1997. Kenya was the United States'90th largest export market in 1998. U.S. imports from Kenya were about $99 million in 1998, a decrease of $15 million (13.6 percent) from the level of imports in1997. The stock of U.S. foreign direct investment (FDI) in Kenya in 1997 was $190 million, an increase of over 32.9 percent from the level of U.S. FDI in 1996.

Kenya's economic growth rate slowed in 1998 for the second year in a row. Following a 4.6 percent increase in real gross domestic product (GDP) in 1996, the growth rate declined to 2.3 percent in 1997 and then dropped to an estimated 1.5 percent in 1998. The continued poor performance of the economy may be attributed to problems with economic governance, as well as deteriorating infrastructure and high interest rates during most of the year. Investor confidence remains low as the result of a troubled banking sector, occasional outbreaks of political and ethnic violence and continuing crime problems. During 1998, the Government of Kenya made slow progress in meeting the International Monetary Fund's conditions for resuming assistance under an enhanced structural adjustment facility (ESAF). In June 1998, the World Bank allowed its structural adjustment credit to lapse.

IMPORT POLICIES

Kenya progressively reduced its number of customs duty bands (including the zero rate) from eight to four between June 1994 and June 1997. The maximum tariff rate fell from 45 percent in June 1994 to 25 percent in June 1997. Additional suspended duties of 5 percent or 10 percent apply to certain products including paper and paperboard, flat-rolled iron and steel, resin, yarn, cars, minibuses, pickups, and tires.

Beginning in June 1998, import duties were increased from 15 percent to 25 percent on a selected range of agricultural produce and their substitutes, cement, grinding wheels and gas cylinders. Kenya's import regulations on agricultural products are constantly changing, depending on politics, domestic supply, and demand. To address food security concerns, the government periodically prohibits exports of wheat and corn. Kenya has frequently applied prohibitively high tariffs or outright import bans on certain agricultural imports. A dairy import ban was lifted in mid-l997. However, as of December 1997, an ad valorem duty of 70 percent was levied on rice, sugar, and milk. The tariff on wheat was the higher of the following: (a) 75 percent *ad valorem* or (b) 50 percent ad valorem plus 3.75 Kenyan shillings per kg. (approximately $56 a metric ton). In June 1998, a 5- percent suspended duty was imposed on imported fruits, vegetables and their products and on such non-agricultural items as paper and paper products, clothing, aluminum tubes, lamps and electric cables.

In 1993, Kenya abolished import licensing except for certain items based on health, environmental, and security concerns. The list includes livestock and commercial seeds. Any import shipment with an f.o.b.value of more than $5,000 requires pre-shipment inspection (PSI). Shipments originating from the United States are inspected by COTECNA Inspection, S.A., a Swiss firm. In addition to a "clean report of findings" (CRF), certifying that the goods are consistent with the invoice, the inspection agency also furnishes a"valuation certificate" or bill of lading that enables the Kenyan Government to determine the correct duty. The import declaration fee, which includes a PSI fee, is 2.75 percent of the export (f.o.b.) value.

In addition to the import declaration fee, agricultural imports are charged a fee of 1 percent of C.I.F. value to support the Kenya Plant Health Inspectorate Service (KEPHIS). KEPHIS was recently formed to regulate the importation and exportation of plant materials and the trade in bio-safety control organisms in accordance with the International Plant Protection Convention (IPPC). Moreover, if importers fail to obtain an advance inspection, a 15-percent penalty (25-percent for motor vehicles) is applied for local inspection. Goods airlifted by courier services are not subject to PSI if their value does not exceed $10,000.

In the last two years, the government largely reversed earlier promising steps to address corruption at the port of Mombasa. The government replaced a well-respected businessman hired to manage the port. One effort to prosecute port and customs officials accused of corruption made little headway. In September 1996, the government, under pressure from international donors, turned over the management of the port container terminal to the UK port of Felixstowe. However, Felixstowe withdrew in September 1997 after the government failed to address many deficiencies and problems at the port. In 1998, government officials promised steps to address the problems of deteriorating equipment and corruption at the port but little progress was made.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Kenya Bureau of Standards (KBS), a government regulatory body under Kenya's Ministry of Industrial Development, inspects imports to ensure conformity to International Standards Organization (ISO) product standards. The inspection fee is 0.2 percent of cif value. KBS also conducts product testing for individual product categories and undertakes certification. Products that do not meet the standards are withdrawn from the market, and the importer is prosecuted. KBS is reviewing all standards, especially those that are ten or more years old and about 500 standards still need to be reviewed.

Certain imported agricultural goods are subject to further inspection by the KEPHIS. For example, commercial hybrid grain seeds must be evaluated for a period of four years by the Inspectorate before they can be released to the market. In early 1996, Kenya, citing environmental standards, effectively banned commercial seed imports by requiring that all approved seed be grown in the country. Though the ban was later lifted, the government still carefully controls seed corn imports. As of July 1997, the Weights and Measures Act requires a reduced list of twenty different products to be labeled with metric measurements and packaged in even units(e..g., 2.5 liters, not 2.51). Shipments in violation of these rules may not be re-exported.

GOVERNMENT PROCUREMENT

Although not repealed, Kenya's "buy national" requirement, which provides local firms with a 10 percent preference in government tenders, is no longer observed. According to government regulations, goods worth more than $4,000 must be purchased through open tender. In practice, however, tenders are frequently awarded to noncompetitive firms in which government officials have a significant interest. Conflict-of-interest regulations are not enforced. Some of the largest government contracts, including those for an international airport in 1994 and for a Presidential jet in 1995, have been awarded in secret. More transparent government procurement might boost U.S. exports by $100 million to$500 million, based on available government procurement opportunities.

Kenya

EXPORT SUBSIDIES

In 1992, the government enacted a duty/value-added tax remission facility that enables exporters to purchase imported inputs tax free. Some firms in export processing zones dump goods imported duty free on the domestic market, thus unfairly competing with local producers and other importers. No general system of preferential financing exists, but sectoral government development agencies in areas such as tourism and tea are supposed to provide funds at below-market rates to promote investment and exports by Kenyans.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Kenya is a member of the World Intellectual Property Organization (WIPO) and the African Regional Industrial Property Organization. Kenya has joined both the Paris Convention on the protection of industrial property and the Berne convention on the protection of literary and artistic works. Although a unified system for the registration of trademarks and patents from Anglophone Africa was signed in 1976, the effort has not proceeded owing to lack of coordination and funds. Future protection may be achieved through the African Intellectual Property Organization, although enforcement and cooperation procedures are untested. Kenya, as a member of the WTO, must also implement the agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs). Kenya is amending its intellectual property laws to conform to WIPO guidelines, the TRIPs agreement, and other international conventions. In this regard, the Industrial Property (patent) and Trademark Acts are scheduled for amendment in 1999. The copyright act protects sound as well as video recordings. Violations are subject to a fine of up to $3,600 or imprisonment for five years or both. In practice, however, the Attorney General's office (which is responsible for copyright matters) and the police seldom enforce the laws. Pirated sound recordings are common, and virtually all videos available in shops are unlicenced. Given the small size of the market, improved copyright protection might increase exports by less than $10 million.

Regarding intellectual property rights for seeds, Kenya has not joined the Union for the Protection of New Varieties in Plants (UPOV), and its plant variety protection laws do not conform to international regulations. The country is expected to join UPOV in 1999. The Ministry of Agriculture restricts international seed trade by setting quantitative ceilings on cereal seed imports. Moreover, the variety certification process is tedious and restrictive. A minimum of four years is needed for the government to approve or reject a variety, a timetable that effectively restricts trade.

SERVICES BARRIERS

No explicit barriers exist on the provision of services by U.S. professionals. For example, a U.S. bank prepared flotation of shares by Kenya Airways, and a U.S. life insurance firm is the leader in its industry sector. Nevertheless, foreign companies offering services in construction, engineering, and architecture may face discrimination when bidding for public projects. The Kenyan bar, for example, has declined to admit foreign lawyers for more than 11 years. New foreign investors with expatriate staff are required to submit plans for the gradual elimination of non-Kenyan employees.

INVESTMENT BARRIERS

For firms listed on the Nairobi stock exchange, non-Kenyan ownership can total up to 40 percent, with a 5 percent limit on individual foreign investment. Life insurance companies are required to have at least 33 percent local ownership. Foreign brokerage and fund management firms are allowed to participate in the local market through locally registered companies. Such companies must have local ownership of at least: (a) 30 percent in the case of fund management firms, or (b) 51 percent in the case of brokerage firms. In other industrial sectors, local partners are encouraged but not mandated. Small-scale commercial enterprises no longer require a Kenyan partner. Technology transfer requirements and foreign exchange controls have been abolished. Difficulty in obtaining clear title to land, lack of confidence in speedy and fair resolution of disputes, and requests from officials for illicit payments continue to hamper investment. If these investment barriers were lifted, U.S. investment might increase by $100 million to $150 million.

Non-strategic State-owned Enterprises

Kenya has a large number of state-owned enterprises, known as parastatals. The government enacted a policy on the privatization and reform of public enterprises in 1992. Initially, 207 "non-strategic" parastatals were targeted for divestiture. Another 33 "strategic" parastatals were to be retained and reformed by the government to improve their efficiency. By the end of September 1998, the government of Kenya had completed 165 divestitures, from which it received $179 million. Capitalization of the Nairobi stock exchange increased by $105 million. Divestiture took the form of flotation on the Nairobi stock exchange (11 firms), competitive bidding (16) liquidations, (14) receiverships, (20) preemptive rights, (54) and one management/employee buyout. In addition, divestiture was completed of 39 tea factories owned by the Kenya Tea Development Authority, a government parastatal. The largest deal so far was the 1996 sale of Kenya Airways, which realized $26 million. The government sold 26 percent of the airline to KLM, 51 percent through a public flotation, and retained the remaining 23 percent.

Planned privatization for 1998 included the country’s biggest sugar mill, a large reinsurance company, and flotation of an additional 25 percent of government shares in the country's largest bank, Kenya Commercial Bank (KCB). Only the sale of shares in KCB was concluded. Mumias sugar company was not an attractive investment prospect due to cash flow problems arising from competition from imported sugar. In addition, the procedures for privatizing the corporation were the subject of controversy between its management, the government and sugar cane farmers. Kenya Reinsurance Corporation could not find a "suitable strategic partner" to initiate its privatization process.

While the government has removed most of the monopolies, including all trading monopolies, formerly enjoyed by the country's "strategic" parastatals, some regulatory practices remain barriers to investment. For example, the government continues to restrict access to radio and TV licenses for independent media organizations. The government provides no clear-cut guidelines for licensing TV and radio stations, which results in a biased licensing system. Despite licensing problems, Kenyans now have three open-air television stations: the state-owned Kenya broadcasting corporation (KBC) and two private stations whose owners maintain close ties to the government. Though the pace of liberalization is slow, the government is gradually opening the airwaves to independent broadcasters as evidenced by the licensing in mid-1997 of broadcasts by the British Broadcasting Corporation (BBC) and the granting in 1998 of frequencies to the Nation media group for radio and television broadcasts.

Public Utilities

The government has been hesitant to open public infrastructure to competition because most utilities that manage it are considered "strategic" enterprises. The reform and partial privatization of the railways, electric power generation and telecommunications are behind schedule. Kenya Railways Corporation has contracted out maintenance of some of its locomotives to General Electric and may be commercialized further. At the beginning of 1997, the Kenya Power and Lighting Company was split into two entities: the Kenya Power Company (now renamed the Kenya Electricity Generating Company), to deal with power generation, and KPLC, which will now be responsible only for distribution of electricity. An electricity regulatory board was established in April 1998 to regulate retail tariffs and to approve power purchase contracts between KPLC and producers. In a step forward, the government licensed two independent power producers to sell electricity to the Kenya Electricity Generating Company, but there have been questions about the procedures used in the award of the contracts. Since 1994, refined oil products have been imported, but they are subject to high duties to protect the national refinery's market share.

The Kenya Post and Telecommunications Corporation (KPTC) provides both postal and telecommunications services and regulates the provision of these services. The corporation has authorized pay telephones by private bureaus and has a joint venture with a private cellular telephone operator. Several Internet service providers are operating in Nairobi. In general, KPTC has been very slow in approving requests from foreign missions, businesses, or individuals to operate broadcast satellite dishes (VSATS) and has not licensed direct competition in telephone services. The corporation stopped licensing private telephone bureaus beginning mid-December 1996. In addition, and more damaging, KPTC without warning shut down home country direct telephone services in October1996. On a limited basis, some home country direct services have been restored. The corporation has allowed some competition in the area of "add-ons" such as fax and telex services. A wireless local loop is being planned to enhance countrywide telephone penetration.

Legislation to liberalize the telecommunications sector was passed by Parliament in 1998. It should take effect in early 1999. The new law establishes the Communications Commission of Kenya to regulate telecommunications and radio communications in the country (a role similar to the FCC in the United States). The commission will also regulate postal services. The Kenya communications act of 1998 also establishes a telecommunications corporation, TELKOM Kenya, and a Postal corporation as spinoffs from KPTC. Finally, the Act sets up a national communications secretariat to advise the government on sectoral policy. The government plans to sell up to 30 percent of TELKOM Kenya to a strategic partner before an initial public offer is made on the Nairobi stock exchange. Much of the staff for the Communications Commission will come from the soon-to-be-defunct KPTC.

ANTICOMPETITIVE PRACTICES

As noted above, the government does not rigorously enforce copyright laws on sound and video recordings. Further, ineffective and corrupt enforcement of import policies exposes a wide range of businesses to unfair competition.

ELECTRONIC COMMERCE

Kenya has not yet formulated a policy on electronic commerce.

KOREA

In 1998, the U.S. trade deficit with Korea was $7.4 billion, a change of $9.3 billion from the $1.9 billion trade surplus the United States had with Korea in 1997. In 1998, Korea was the United States' ninth largest export market. In 1998, merchandise trade between the United States and Korea totaled $40.4 billion, compared with $48.3 billion for 1997. U.S. exports to Korea in 1998 were $16.5 billion -- a 34.0 percent drop from the 1997 figure of $25.1 billion. U.S. imports from Korea in 1998 were $23.9 billion -- a 3.4 percent increase from the 1997 figure of $23.2 billion. In 1998, U.S. foreign direct investment accounted for almost one-third of the $8.8 billion in total FDI coming into Korea.

Overview

Korea is one of the United States' major trading partners, but it also has been described as one of the toughest markets in the world for doing business. In response to the financial crisis and recession that began in 1997, Korea implemented structural reforms in the financial, corporate, labor and government sectors aimed at putting the Korean economy on a more open, market-oriented basis. Korean President Kim Dae Jung has made strong public statements about the need to attract foreign investment, accept imports, and restructure the corporate conglomerates, or *chaebols*, in Korea. The Korean Government has made efforts to break the ties between government, banks, and the *chaebols* and to push them to restructure. These linkages, central to Korea's development model for more than 30 years, have impeded competition and market access, both in Korea and in other markets. If Korea's reforms are fully and faithfully implemented, trade and investment barriers should be reduced. In 1997 and 1998, Korea did implement some reforms, for example, in the financial services sector, but resistance to key trade reforms remains, and many issues have arisen on Korea's compliance with its international obligations.

The fall in the *won* (by approximately 50 percent between November 1997 and January 1998), the financial crisis and the recession caused sharp declines in corporate investment, domestic consumption and imports in 1998. Imports are expected to resume growth in 1999 as the economy begins to recover, but Korea is expected to run both global and bilateral trade surpluses again.

IMPORT POLICIES

Tariffs and Taxes

Korea bound 91.5 percent of its tariff line items in the Uruguay Round negotiations. Korea's average tariff was 7.9 percent in 1998, compared with 8.44 percent in 1997. Korea's tariffs on all agricultural products, except rice (HS 1006), are bound. Between 1995 and 2004, Korea will implement its Uruguay Round commitments to lower duties on more than 30 agricultural products of primary interest to U.S. exporters. These products include intermediate and high-value items such as vegetable oils and meals, processed potatoes, mixed feeds, feed corn, wheat, fruits, nuts, popcorn, frozen French fries, and breakfast cereals.

Under its Uruguay Round commitments, Korea also established tariff-rate quotas (TRQs) that will either provide for minimum access to a previously closed market or maintain pre-Uruguay Round access. (See also "Quantitative Restrictions, TRQs and Import Licensing.") In-quota tariff rates are to be maintained at zero or low levels, but over-quota tariff rates on some products are prohibitive. Specifically, natural and artificial honey are assigned an over-quota rate of 257 percent; skim and whole milk powder, 198 percent; barley, 342 percent; barley malt, 284 percent; potatoes and potato flakes, over 300 percent; and popcorn, 665 percent.

Korea

Duties are still very high on a large number of high-value agricultural and fishery products. Korea imposes tariff rates above 40 percent on products of interest to U.S. suppliers, including shelled walnuts, table grapes, beef and a variety of citrus fruits. Products subject to a 30 percent or higher tariff rate include certain meats, most fruits and nuts, many fresh vegetables, starches, peanuts, soups, various vegetable oils, juices, jams, peanut butter, beer and some distilled spirits and dairy products.

Korea is in the process of reducing tariffs to zero on most or all products in the following sectors: paper, toys, steel, semiconductors and farm equipment. Korea is harmonizing its chemical tariffs to final rates of 0, 5.5, or 6.5 percent, depending on the product. From pre-Uruguay Round levels, tariffs on scientific equipment are being reduced by 65 percent. On textile and apparel products, Korea has harmonized and bound most of its tariffs to the following levels: 7.5 percent for man-made fibers, 15 percent for yarns, 30 percent for fabrics and made-up goods and 35 percent for apparel.

U.S. firms in a number of sectors continue to report that the combination of current tariffs and value-added taxes for agricultural and manufactured products is often sufficient to either keep imports out of the Korean market or to make their prices uncompetitive. For example, the Korean Government assesses higher excise taxes on Western-style distilled spirits than on traditional, Korean-style spirits, *e.g.*, Soju. While Korean Soju is assessed a liquor tax of 35 percent plus an education tax of 10 percent, imported whisky and brandy face a liquor tax of 100 percent and a 30 percent education tax. Other Western-style distilled spirits are assessed a liquor tax of 80 percent plus an education tax of 30 percent. On July 31, 1998, a WTO dispute settlement panel found the Korean tax measures on alcoholic beverages to be inconsistent with GATT Article III.2 (national treatment). On January 18, 1999, the WTO made a final ruling against Korea’s appeal of the decision. The U.S. and Korean Governments are discussing the means for eliminating the discriminatory taxation in Korea.

Another example of Korea’s tariff/tax barriers is in the area of motor vehicles. Imported vehicles are subject to a tariff rate of 8 percent, more than three times the U.S. tariff. Korea then levies multiple, cumulative high taxes on top of the 8 percent applied tariff. Three of these taxes are based on engine size. Although Korea agreed to eliminate some of its motor vehicle taxes and to reduce others under the 1998 Memorandum of Understanding, the tax and tariff burden on imported cars with 2000 cc or larger engines remains significantly greater than the tax burden on their domestic equivalents.

Korea uses "adjustment tariffs" at the HS four-digit level to protect domestic producers against import surges. In 1999, Korea renewed adjustment tariffs on 29 of the 38 items from 1998 for another year, but reduced the tariff rates. Among the 32 remaining items, 14 are seafood (HS 03 and 16 categories), four are textiles (HS 50 through 63 categories), five are mushrooms and bracken (HS 07 category), and two are wood products (HS 44 category). While Korea has not imposed any new adjustment tariffs since 1994, tariff rates have been maintained at the “adjusted” or increased rates. For example, in December 1997, Korea raised the applied tariff on processed rice (HS 1904) from eight to 50 percent. The bound tariff rate was set at 57.6 percent in 1998 and will decrease to 54 percent in 2001.

Korea uses “adjustment tariffs,” or tariff “snapbacks,” at the HS four-digit level to protect domestic producers against import surges. In 1997, Korea committed to the IMF that it would eliminate the tariff adjustment mechanism on 24 of the 68 tariff line items on which it had previously used tariff adjustments. While Korea did eliminate the “adjustment” mechanism for these line items, it maintained tariff rates at the “adjusted” or increased rates, *e.g.*, on processed rice. In 1999, Korea renewed the “adjustment tariff” mechanism on 32 of the 38 items on which the mechanism was used in 1998. Among the 32 items, 14 are seafood (HS 03 and 16 categories), four are textiles (HS 50 through 63 categories), five are mushrooms and bracken (HS 07 category), and two are wood products (HS 44 category).

Korea

Nontariff Measures

Import Diversification Program

Korea maintains an import diversification program, which as of December 1997, barred imports of 113 items from Japan. Under the IMF stabilization package for Korea, the Korean Government agreed to eliminate this program in three tranches**.** The first two tranches removed 65 items from the list. Imports of the remaining 48 items will be freed on June 30, 1999, when the program is completely eliminated.

Quantitative Restrictions, TRQs and Import Licensing

Korea implements quantitative restrictions through its import licensing system. A government export-import notice lists products that are restricted or prohibited. Most imported goods no longer require approval, but some tariff line items (mostly agricultural and fishery products) are restricted for import, that is, they are subject to quotas or TRQs with prohibitive over-quota rates.

After a 1989 GATT panel ruling against Korea's measures on beef, Korea agreed to phase out its balance-of-payment restrictions on beef. Subsequently, in 1990, and in July of 1993, the United States and Korea concluded Records of Understanding (ROUs) under which Korea agreed to annual, increasing minimum market access levels for beef imports through 1995. The 1993 agreement also guaranteed direct commercial relations between foreign suppliers and Korean retailers and distributors and provided that a growing volume of beef be sold through that channel instead of through a quasi-governmental agency. Specifically, the agreement provided for (1) an increase in the minimum annual quotas; (2) an increase in the number of Korean meat outlets and retailers that can undertake commercial transactions with U.S. exporters without Korean Government intervention -- the Simultaneous Buy/Sell (SBS) system; (3) dramatically increased annual SBS sub-quota amounts and (4) a ceiling on the mark-up levied on the duty-paid price of imported beef. Australia and New Zealand – the other two major suppliers of beef to Korea – also entered into identical agreements on beef trade with Korea.

In December 1993, the provisions of the July agreement, including the increasing, annual minimum market access provisions, were extended after the United States, during the Uruguay Round, agreed to Korea's request to extend the phase-out period for balance-of-payment restrictions on beef to December 31, 2000. In short, the United States agreed to allow Korea to maintain its quantitative restrictions on beef imports after a GATT panel ruled that Korea had no legal right to maintain such restrictions, and in return, the United States was guaranteed increasing access to Korea's beef market through minimum quotas that expanded over time.

Pursuant to section 306 of the Trade Act, the USTR is monitoring Korea's implementation of its commitments on beef imports. The U.S. and Korean Governments have met quarterly on the specifics of Korea's implementation record on the 1993 agreements. In 1997, Korea did not meet its annual commitment to import 167,000 metric tons of beef. In 1998, Korea fell short of its 187,000 metric ton quota by as much as 60 to 80 percent.

U.S. Government officials have repeatedly raised the beef issue in an attempt to establish a market-driven beef import system in Korea by eliminating government impediments to the entry and distribution of foreign beef. In September and November of 1998, the U.S. and Korean Governments held two rounds of talks, and in January 1999, sat down again in Washington to try to reach agreement on such a plan. As no agreement was reached over the course of these talks, the U.S. Government requested WTO dispute settlement consultations on February 1. Consultations were held on March 11 and 12 in Geneva. The U.S. Government will take the steps necessary to resolve this matter.

Under the U.S.-Korea 1993 ROU and under Korea's Uruguay Round commitments, the Korean Government committed to liberalize, by January 1, 2001, its quantitative restrictions on the eight remaining items subject to balance-of-payments protection. These items consist mainly of live cattle (dairy and beef) and beef products (HS 0201 and 0202). Korea's quantitative restrictions on rice will be liberalized by January 1, 2004.

Korea's administration of its TRQs on certain products raises additional market access problems. Per industry input, the U.S. Government has raised concerns about Korea's process for administering its quotas on rice and its TRQs, particularly those on fresh oranges, value-added soybean products and value-added corn products.

On rice, a state trading organization imports the product through the WTO-mandated minimum access program, while the Korean Government assumes immediate control upon its entry into Korea. Thus, the Korean Government maintains full control over both the distribution and end-use of rice. This process restricts access to the Korean market for high-quality U.S. table rice. The Korean Government has repeatedly stated that it will not allow imported table rice to be directly marketed to Korean consumers.

On oranges, as mentioned above, in 1997, the quantitative restrictions on fresh oranges were liberalized to permit out-of-quota imports, which are assessed a duty of 74.5 percent in 1999, with annual reductions that will reach 50 percent (the current in-quota rate) in 2004. The in-quota quantity for 1999 will be 33,674 metric tons and will be expanded at an annual growth rate of 12.5 percent through 2004. Korea has designated its only citrus cooperative as the sole importer of the TRQ in-quota quantity of fresh oranges. The United States has repeatedly expressed its concern that such an arrangement creates a conflict of interest.

On value-added soybean and corn products, the Korean Government continues to control allocation of the in-quota quantities. By aggregating raw and value-added products into the same TRQ, the Korean Government restricts access to the Korean market for value-added products, such as corn grits and soyflakes, while allowing entry of only the companion raw materials under the in-quota quantity.

Import Clearance Procedures

U.S. suppliers of food and agricultural products continue to encounter trade-impeding practices in Korean ports of entry, including on products for which market access was liberalized under bilateral or multilateral trade agreements. Korea has made changes to its import clearance procedures over the last year, but clearance times are still excessively slow and procedures remain arbitrary. Surveys of U.S. trading partners in Asia indicate that import clearance for most agricultural products requires less than three to four days, while in Korea, import clearance for new products still typically takes two to four weeks, and sometimes up to two months (except for perishable fruits and vegetables, which take a maximum of five days).

The Korean Ministry of Health and Welfare (MHW), including its Korea Food and Drug Administration (KFDA), and the Ministry of Agriculture and Forestry (MAF), including its National Plant Quarantine Service (NPQS) and National Veterinary Research and Quarantine Service (NVRQS), account for the greatest delays. These Ministries share responsibility for administering Korea's food-related laws and regulations, which comprise requirements for ingredient listing by percentage and manufacturing process information, phytosanitary rules and standards and conformity assessment procedures (sampling, inspection and testing) in the Korean Food and Food Additives Codes. Both MHW and MAF impose numerous requirements that prohibit access or delay import clearance while adding costs to importers.

In April 1995, the U.S. Government requested WTO dispute settlement consultations after U.S. citrus rotted at a Korean port. In response, Korea provided expedited clearance (five days) for fresh fruits and vegetables. Between April 1995 and January 1997, the United States had a number of rounds of WTO consultations with Korea on the additional reforms it had promised.

At the end of 1996 and in 1997, Korea made more changes to its import clearance procedures. Specifically, Korea (1) instituted a new sampling, testing and inspection system; (2) eliminated mandatory incubation testing for California fruit; (3) used the concept of scientific risk assessment to develop quarantine pest lists for use in determining fumigation requirements and (4) revised some of the Korean food additives standards to bring them into closer conformity with CODEX Alimentarious Commission standards. Some problems remain. For example, the method for testing cheese in Korea has not been standardized, resulting in container loads being dumped.

In WTO dispute settlement consultations in January 1997, the Korean Government also indicated that it would no longer require as conditions for import clearance, (1) sorting for separation of spoiled produce; (2) manufacturing process information and (3) ingredient listing by percentage for all ingredients. However, some Korean port inspectors continue to require manufacturing process information and ingredient listing by percentage for all ingredients**,** indicating a general lack of understanding of their own regulatory requirements. Furthermore, some of the changes Korean officials are implementing do not adequately address U.S. concerns. For example, Korea's interpretation of the term "quarantine pest" allows arbitrary application of regulations affecting the entry of fresh produce. Korea continues to require incubation testing for Florida fruit, even when shipments are accompanied by an APHIS certificate indicating that the fruit originated in a "pest-free" area. Korea also denies entry of fresh potatoes from several U.S. states although this phytosanitary ban has not been scientifically proven to be necessary.

In 1998, Korea announced its intention to bring its Food Code standards into closer conformity with CODEX standards. This is significant for U.S. companies that have had entry problems due to restrictive standards. Also in 1998, Korea revised its microorganism standards for meat, and agricultural chemical standards for fresh fruit to bring them into conformity with international standards defined by the CODEX Alimentarius Commission. In June of 1998, Korea abolished government-mandated shelf-life requirements for 66 food items, including sterilized milk products. The mandatory shelf-life requirement remains on 21 food items, mostly instant food items such as lunch box, tofu and certain other products whose composition deteriorates quickly. In 1998, the KFDA also initiated a project to bring Korea's Food Codes and food labeling standards into conformity with international standards by the end of 1999.

The United States will continue its dialogue with the Korean Government on its import clearance procedures until clearance times in Korean ports of entry are comparable to those in other Asian ports and Korean procedures are based on science and consistent with international norms. (See also "Standards and Conformity Assessment Procedures.")

Customs Procedures

U.S. firms continue to encounter border entry barriers in the form of Korean Customs Service (KCS) decisions to arbitrarily and suddenly change the customs classification and border treatment (*i.e.*, tariff level) of certain products. For example, the KCS has severely restricted U.S. exports of potato products to

Korea by abruptly changing the classification of such products from a Harmonized System (HS) category subject to only a tariff, to an HS category subject to a restrictive TRQ with a prohibitive over-quota tariff rate. The U.S. Government is seeking written confirmation that the KCS will enter blended potato flakes and other blended products under the proper HS classification, and therefore apply to them non-restrictive border treatment. The U.S. Government will continue to carefully monitor the KCS's treatment of blended food products. U.S. exports of soda ash also have been misclassified, thus resulting in a higher tariff.

The KCS also rejects customs clearance applications on administrative grounds (wrong print, font size, erasure marks on application, etc.), thereby delaying the official start of the customs clearance process. The KCS has claimed that it will try to speed up clearances by (1) reducing the number of import products that require confirmation that all import requirements have been met and (2) establishing a computer network to link the KCS with the other involved government agencies to speed up confirmations.

Korean regulations also often require a local trade association consisting of local competitors to certify or approve import documentation. In addition to requiring the importer to pay a processing fee which helps fund the association, this rule requires importers to submit business confidential information to their local competitors.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Standards and Conformity Assessment Procedures (Sampling, Inspection, Testing and Certification)

Korea maintains standards and conformity assessment procedures (sampling, inspection, testing and certification), *e.g.*, in the Korean Food and Food Additives Codes, that deviate from international norms, do not appear to be based on scientific risk assessment and specifically target imports. In addition, the Korean Government continues to enforce or maintain trade-impeding import clearance requirements on proprietary information (ingredient listing by percentage and manufacturing process information) and has not fully addressed U.S. concerns about other sanitary and phytosanitary barriers to entry. (See also “Import Clearance Procedures.”)

U.S. industry also cites Korea’s subjective application of Korean Food Code rules to non-traditional foods as a barrier to the introduction of some U.S. products, such as ostrich, emu and alligator meat, to the Korean market. Under the Korea Food Code, raw materials originating from non-traditional animals, plants, etc., cannot be used for food manufacturing, processing and cooking if such materials are deemed inappropriate for eating in Korean custom or tradition or in the view of the KFDA.

Efforts to obtain market access for in-shell walnuts thus far have been stymied by Korea’s insistence on the establishment of an onerous and unnecessary phytosanitary preclearance inspection program. By conducting pest risk analysis, the United States also continues its efforts to overcome existing phytosanitary-based import bans on fresh potatoes, apples, pears and stone fruit.

Korea continues to maintain government-mandated shelf-life requirements for items such as dairy products packaged in table-top cartons and bottled water.

Korean Government agencies require pre-approval for cosmetics, food additives, pharmaceuticals, chemicals, electronics, personal communication services and many other products. Other countries require pre-approval for some products, but the range of products affected is exceptionally large in Korea, and companies must submit documentation that is extraordinarily detailed. Furthermore, the information provided in the prior-approval/certification process is not protected and sometimes is "leaked" to the press. This incites opposition to imported products.

U.S. cosmetic producers cite Korea's duplicative testing requirements as an impediment to trade. Korea requires animal testing and does not accept a certificate of analysis from a U.S. firm as a substitute. (See also “Cosmetics.”) As of January 1, 1998, the KFDA abolished the annual testing requirement for imported cosmetics and authorized importers to perform the required self-testing, provided that they maintain records for each batch/shipment.

U.S. pharmaceutical companies report significant delays in obtaining final approval from MHW for the local sale of products developed outside of Korea within the last three years. New products developed in Korea can proceed directly from phase 1 to phase 3 clinical trials, but conducting phase 3 clinical trails still constitutes a prohibitive expense for foreign firms. For products developed outside of Korea, KFDA is moving toward allowing phase 3 clinical trials to begin in Korea before a Certificate of Free Sale (CFS) is issued from the country of origin. However, the written regulations do not yet reflect progress in this area, and questions remain about what sort of documentation is required in order to waive the requirement for a CFS. Also, Korean health authorities still require the repetition of phase 3 clinical trials in Korea when such trials have been or are being conducted in other markets. Korea's requirements for redundant phase 3 clinical trials delay the introduction of foreign developed products into the Korean market by about two years. As MHW has no system to differentiate between U.S. prescription and non-prescription (over-the-counter) drugs and nutritional supplements, both types of pharmaceuticals are subject to the same rigorous testing and approval process. (See also “Lack of Intellectual Property Protection” and “Pharmaceuticals.”)

Korea's motor vehicle standards and certification regulations are complex and excessive. In the 1998 MOU on autos, Korea agreed to adopt a self-certification system for automobiles by no later than the year 2002. Before that date, Korea agreed to simplify and streamline its standards and certification rules and procedures, including through the allowance of motor vehicles in Korea that conform to the U.S. standard on headlamps. The U.S. Government is closely monitoring Korea's compliance with the standards and certification provisions in the 1998 MOU. The two governments will hold their first formal consultation on the implementation of this agreement in April of 1999.

Under the IMF program, the Korean Government has committed to accelerate harmonization of its certification procedures with WTO standards and to strengthen their implementation. Legislation to this effect is pending in the National Assembly and revisions to a number of regulations and guidelines have already been made. Revisions made thus far do not address the core U.S. concerns on bilateral trade issues in product areas such as cosmetics and pharmaceuticals.

Labeling Requirements

U.S. exporters cite Korea’s nontransparent and burdensome labeling requirements as barriers to entry. These requirements are often arbitrarily enforced. For example, batch codes and the date of manufacture must be included on each individual Korean label. In 1998, vaguely worded labeling regulations issued by several Ministries generated the greatest number of trade-inhibiting problems for imported food products. Such problems generally resulted from local officials’ interpretation of the regulations and typically led to costly and unnecessary repackaging and relabeling before the product could clear import inspection.

Importers of internationally recognized food products have been instructed to rewrite their English language labels because some inspectors viewed certain English terminology to be too confusing for the average Korean consumer who has limited knowledge of international definitions and the English language. For example, Korean labeling standards define chocolate according to a definition germane only to Korea. These labeling standards, now under official review, enabled a lone field inspector to block entry of a world renowned chocolate product based on his belief that the product's description, "chocolate," would confuse Korean consumers.

The U.S. Government has worked with Korean Ministry officials to accept foreign language labels if they met the regulatory labeling requirements of the originating country. The Korean Government is planning an overall revision of its food labeling standards by December of 1999.

The Ministry of Environment has proposed new packaging and labeling standards on food. Implementation of these standards has been delayed until 2001 and the U.S. Government will continue to monitor this issue carefully.

Labeling standards are not yet required for genetically modified organisms (GMO), mainly because the average consumer has not yet identified this issue as significant. However, special interest groups became more active on this issue in the latter half of 1998, mirroring the growing movement in Europe. At present, government scientists view GMO products as safe, but additional scientific data will be needed to support their writing of science-based labeling standards.

GOVERNMENT PROCUREMENT

Korea began implementing the WTO Agreement on Government Procurement (GPA) on January 1, 1997. As part of its GPA commitments, Korea agreed to cover procurement of goods and services over specific thresholds by numerous Korean central government agencies, provincial and municipal governments and some two dozen government-invested companies. The annexes to Korea's GPA membership package specify the value thresholds in SDR terms for coverage of procurement contracts under the Agreement.

Korea's coverage under the GPA does not extend to procurement related to, among other things, national security and defense, Korea Telecom's purchases of telecommunications commodity products and network equipment and procurement of satellites (for five years from entry into force of the GPA for Korea). Purchases by the Korea Electric Power Corporation (KEPCO) are covered, with the exception of certain equipment.

The GPA enables suppliers to pursue alleged violations of the Agreement through domestic bid challenge procedures. Accordingly, the Korean Ministry of Finance and Economy (MOFE) has established an International Contract Dispute Mediation Committee to deal with any foreign supplier allegations that Korean procuring entities have not complied with GPA provisions. MOFE has not received any bid challenges under these procedures since the GPA took effect. However, the Embassy has received an increasing number of complaints from U.S. firms who experienced irregularities in the bid tendering procedures conducted by various GPA-covered government entities. The U.S. Government is monitoring these cases to determine whether further action is warranted.

The Supply Administration of the Republic of Korea (SAROK), formerly the Office of Supply (OSROK), is responsible for the purchase of goods and incidental services required by central and sub-central government entities. SAROK also handles government construction contracts and related services and the stockpiling of raw materials.

SAROK estimated that its total procurement of goods and services, both GPA-covered and non-GPA-covered, reached $3.8 billion in 1998. Approximately $1.3 billion was subject to international tendering procedures in accordance with GPA rules. SAROK identified the following categories of products and equipment as open to international competitive bidding in 1998: medical, educational and sewage treatment equipment; scientific testing instruments and helicopters. In addition to purchases of goods and services, SAROK estimated that it will handle construction contracts valued at $6.1 billion in 1998.

Not all GPA-covered procurement is handled by SAROK. In the case of Korean Government-owned commercial enterprises (listed in Annex 3 of Korea's accession agreement), procurement is handled in-house, with these entities following the same GPA rules. Thus, tendering under open formal procedures is required.

Since 1997, U.S. companies have indicated that the Korean Airport Construction Authority (KOACA), which is responsible for managing procurement for Inchon airport, discriminates against foreign firms bidding for projects. KOACA procurement practices, such as domestic partnering and certain licensing requirements, are in violation of WTO GPA requirements and restrict the ability of U.S. firms to participate in bidding opportunities and to win contracts.

In 1997, 1998 and 1999, U.S. officials raised this issue in the WTO Government Procurement Committee and in bilateral consultations. Korea's response has been to claim that KOACA is not covered by the GPA, despite Korea's representation to the United States in its 1991 GPA negotiations that it would cover all entities responsible for airport procurement. As Korea's position on this issue remains unchanged, the U.S. Government in February 1999 requested WTO dispute settlement consultations on Korean airport procurement and held these consultations in March. The U.S. Government will take the steps necessary to resolve this matter.

EXPORT SUBSIDIES

In the past, Korea has aggressively promoted exports through a variety of policy tools. However, in the WTO, Korea committed to phasing out those programs not permitted under the WTO Agreement on Subsidies and Countervailing Measures.

Under its IMF stabilization package, Korea committed to eliminate four trade-related WTO-prohibited subsidies. Specifically, in Korea's Tax Exemption and Reduction Control Act, the following provisions were eliminated: (1) reserves for export loss; (2) reserves for overseas market development; and (3) tax incentives for the encouragement of investment. In addition, through an administrative decree, Korea eliminated the Ministry of Information and Communication's program to promote the use of mini-computers. In July 1998, Korea committed to rationalize its overall subsidies program, including by notifying the WTO of the contents of 19 subsidies and by reducing the benefits available in 68 non-WTO-actionable subsidies.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Korea has made significant efforts to strengthen its intellectual property rights (IPR) laws and enforcement, although there have been inconsistencies with respect to court interpretation and rulings on the law. In 1997 and 1998, Korea was listed on the Special 301 "watch list."

Korea

Pursuant to its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Korea passed four acts (patent, utility model, design and trademark) in December 1995, and implemented new copyright, computer software and customs laws in 1996. In 1997, the trademark law was amended to afford protection to three-dimensional trademarks (registered in Korea only). On March 1, 1998, the revised trademark law became effective and the new patent court was established. Korea is implementing developed-country IPR standards in many areas, but still claims developing country status with respect to its TRIPS obligations overall. The U.S. Government has made it clear to the Korean Government in the negotiations on the Bilateral Investment Treaty (BIT) that the issues raised with respect to Korea's TRIPS consistency must be resolved before we can sign the BIT.

Korean patent law is fairly comprehensive, offering protection to most products and technologies. In July 1997, the Patent Act and Utility Model Act were amended to streamline the examination and appellate process and to boost monetary penalties for cases of patent infringement from 20 million *won* to 50 million *won*. U.S. industry believes that deficiencies remain in the interpretation of claims and in the treatment of dominant and subservient patents. Additionally, Korea's recognition of international ownership of foreign patents has been inconsistent, and approved patents of foreign patent holders have been vulnerable to infringement.

The Korean Industrial Property Organization (KIPO) took the lead in amending Korean laws to address U.S. concerns about restrictions on patent term extension for certain pharmaceutical, agrochemical and animal health products, which are subject to lengthy clinical trials and domestic testing requirements. In the past, pharmaceuticals' patent term protection for the clinical trial period was lost if that period took less than two years. In the fall of 1998, the National Assembly passed legislation amending these restrictive provisions.

Although a law permitting patent extension was adopted on January 1, 1999, Korea still has failed to provide full retroactive protection to existing copyrighted works as required under the TRIPS Agreement. The copyright law only provides protection for cartoon characters that possess artistry and creativity. The trademark law does not protect some famous U.S. cartoon characters because they have not been registered as trademarks with KIPO. Korean courts, in recent decisions, have consequently declined to extend protection to those cartoon characters and certain textile designs.

There has been some improvement over the past several years on the removal of pirated and counterfeit goods from the Korean market. Through administrative guidance, Korea curtailed the copying and selling of certain U.S. copyrighted works created before 1987. Korea also established "special enforcement periods," during which significant resources are devoted to raids, prosecution and other copyright enforcement activities. The High Prosecutor's Office reported that from January to October 1998, 17,369 IPR infringement cases were reported (up 3.4 percent from 1997), and 1,334 individuals were arrested (up 32 percent from 1997). Police and prosecutors continue to make "special" IPR raids twice per month. U.S. businesses and industry groups have reported that software piracy by large Korean corporate end-users remain a significant problem. Piracy for home use and by educational institutions reportedly continues to be a problem as well, and U.S. firms report that they still have difficulties bringing law enforcement action against "small-scale" infringers. The Korean Government, however, has taken significant steps to ensure that it is no longer using illegal software.

Although Korean laws on unfair competition and trade secrets provide some trade-secret protection in Korea, they remain deficient. For example, U.S. firms, particularly some manufacturers of chemicals and candy, face continuing problems with government regulations requiring submission of very detailed product information (*i.e.*, formulae or blueprints) as part of registration or certification procedures. U.S.

firms report that although the release of business confidential information is forbidden by Korean law, submitted information has not been given sufficient protection by government officials and, in some cases, has been made available to Korean competitors or to their trade associations.

The U.S. pharmaceutical industry continues to experience data protection problems. In fact, the protection of proprietary test data submitted by pharmaceutical companies against “unfair commercial use” by competitors, as called for in the TRIPS Agreement, has been weakened through the elimination of the re-examination period that provided *de facto* data protection for four to six years. There also has been a lack of coordination between health and safety and IPR officials, allowing products that infringe existing patents to be approved for marketing. The U.S. Government will continue to press the Korean Government on IPR protection for pharmaceuticals until U.S. concerns are fully and satisfactorily addressed.

Korea has taken steps to reduce the number of cases in which Korean companies register trademarks similar to U.S.-owned marks. But cases of unauthorized registration -- so-called “sleepers” are still a problem. "Sleepers" are marks filed and registered by Koreans without authorization in the late 1980s and early 1990s, when KIPO was still developing a more effective and accurate trademark examination and screening process. A new trademark law, which became effective March 1, 1998, contains provisions for prohibiting the registration of trademarks without the authorization of foreign trademark holders by allowing examiners to reject registrations made in “bad faith.”

Until 1998, trade dress had been only partially protected under both the prevention of unfair competition law and the design law. The design law grants protection only after registration is completed. However, the amended trademark law now allows the registration of three-dimensional marks and trade dress.

Korea has long been a source of exports of infringing goods. Because textile designs are not fully protected, some Korean companies pirate U.S.-copyrighted textile designs and export them to third countries, competing with genuine U.S.-produced goods. The U.S. Government continues to urge Korean Government officials to increase their efforts toward stopping exports and imports of counterfeit goods to and from third countries.

Recent amendments to the Design Act became effective on March 1, 1998. Under the new amendments, KIPO made industrial designs more competitive by extending the duration of the design right and simplifying the design application procedures. A new design registration system was introduced to enable applications for certain goods to be registered without examination.

SERVICES BARRIERS

Korea continues to maintain restrictions on some service sectors through a "negative list." In these sectors, foreign investment is prohibited or severely circumscribed through equity or other restrictions. (See also “Investment Barriers.”)

Construction

The construction and engineering markets in Korea have been open to foreign competition since January 1, 1996. On January 1, 1997, foreign companies also became eligible to bid on public projects including the massive social overhead capital (SOC) projects designed to improve basic infrastructure in Korea. Most foreign construction and engineering companies report that the difficulties encountered so far have been largely cultural, rather than legal, and that important issues, such as the manner in which companies are pre-qualified and ranked for projects, are now being addressed by the Korean Government. However, firms still report problems with attempts to renegotiate accepted bid prices, as well as with licensing and bonding procedures.

Three separate licenses are available to foreign companies: construction, construction supervision and design. The requirements associated with these licenses are burdensome because they involve hundreds of pages of documentation. Few of the laws and regulations on licensing or the application forms have been translated into English. Also, prior to obtaining a license, an applicant must consult with a number of agencies, each of which has a different interpretation of the licensing rules. The Korean Government has said that it will (1) prepare English language versions of its license application procedures and (2) streamline and relax some licensing qualification procedures and requirements. U.S. firms report that the situation is improving, but that more needs to be done.

Foreign companies are required to deposit $800,000 as a bond with the Korean Construction Mutual Aid Association in order to obtain a construction license. This requirement significantly increases the start-up costs of foreign companies interested in applying for a construction license in Korea. The Korean Government has stated that the cash bond will be reduced annually and will be abolished by 2000.

Advertising

The government-affiliated Korean Broadcasting Advertising Corporation (KOBACO) has a monopoly over the allocation of television and radio advertising time. During the current economic downturn, airtime supply exceeds demand, and foreign firms report that KOBACO is demonstrating considerable versatility in offering more flexible packages to meet advertisers' needs. American firms report that KOBACO has significantly increased the availability of air time in lengths other than the Korean standard of 15 seconds, but that the pricing for non-standard time-lengths is financially unattractive. U.S. firms also note that KOBACO has reduced the standard offered package to one month, but spot buying is still allowed only when there is unsold air time, limiting advertisers' ability to run short-term campaigns and to tailor their media delivery. Although the government proposed allowing in-program advertising, the National Assembly has rejected the proposal.

The Korean Broadcasting Commission (KBC) controls advertising censorship procedures, which are non-transparent. The laws and regulations laying out these procedures are very broad and therefore allow considerable subjectivity in interpretation. All television and radio advertising has to be first submitted in its final, fully-produced form for censorship by the KBC, rather than at the "storyboard" stage. Given the unpredictability of the censorship process, this adds considerably to the risk and costs of developing new advertising campaigns and of introducing new products.

In some product categories, *e.g.*, cosmetics, MHW requires that advertising copy be approved by the local manufacturers association in advance of airing or publication. The approval guidelines are again broadly interpreted, and the process notifies competitors of future marketing activity, including for new products. For cosmetics and pharmaceuticals, "before and after" demonstrations of product effectiveness are not permitted. Direct efficacy claims for pharmaceuticals and OTC medicines are not permitted. This makes the advertisement of superior technology products less effective and ultimately will discourage innovations that are in the best interest of the Korean public.

Audiovisual

Screen Quota

By requiring that domestic films be shown in each cinema a minimum number of days per year (currently, 146 days with reductions to 106 days possible if certain criteria are met), Korea effectively imposes a screen quota on imported motion pictures. The quota acts as a deterrent to trade and to cinema construction and the expansion of theatrical distribution in Korea.

Foreign Content Quota for Free TV

Korea restricts foreign activities in the audiovisual sector by limiting the percentage of weekly broadcasting time (not to exceed 20 percent) that may be devoted to imported programs.

Foreign Content Quota for Cable TV

Cable channels may devote only 50 percent of air time to foreign sports, science and documentary programs. All other types of foreign programming, including movies, are subject to an even stricter quota of 30 percent. These quotas are applied on a per-channel basis. There are only two movie channels (one basic and one premium) and a content quota. Additionally, cable TV programming and advertising must be translated into Korean, which effectively prevents direct rebroadcasting of satellite transmission by Korean cable TV companies. These restrictions severely limit the market for foreign programming.

Satellite Re-transmission

Korean cable television companies reportedly are re-broadcasting satellite transmissions of foreign programming (including U.S.) without paying user fees/ royalties to the foreign broadcasters. Presently, the Korean Government and Korean firms are operating under the assumption that fees for such re-transmissions need not be paid.

Financial

Insurance

Korea is the second largest insurance market in Asia, after Japan, and the sixth largest in the world, with $67.8 billion in premiums paid in 1997. The environment for foreign insurance companies has improved considerably since Korea first opened its market in 1986. Korea has implemented a series of regulatory changes since its 1996 accession to the OECD. Korea incorporated many but not all of these changes, including expanded market access and national treatment, into its WTO schedule as part of the 1997 Financial Services Agreements. Specifically, Korea committed in practice to liberalize at least some forms of cross-border activity in a wide range of services. However, the Korean Government makes no commitments to do so in its new WTO schedule. The U.S. Government will continue to work with the Koreans to ensure that they meet both their WTO and OECD obligations, and that they follow through on their commitment to the IMF to bind Korea's OECD financial services commitments in the WTO.

The financial crisis that began in late 1997 affected the Korean insurance industry. During 1998, as part of overall financial restructuring, the Financial Supervisory Commission (FSC) – the newly established, unified financial regulatory agency -- revoked the licenses of four life insurance companies and merged two existing surety and fidelity insurance companies on the grounds of insolvency. In addition, 16 life and non-life insurance companies are under FSC-supervised workout programs to enhance their solvency margins though recapitalization, staff reductions and other managerial improvements.

Entry into the life and non-life insurance markets has been gradually liberalized, consistent with Korea's OECD and WTO commitments. Some restrictions remain with respect to partnering with local Korean insurance companies and the hiring of Korean insurance professionals. In April 1998, Korea liberalized insurance appraisal and activities ancillary to the management of insurance and pension funds. Korea has begun to allow brokers to operate, and the brokerage market was opened to foreign firms in April 1998. Several foreign reinsurance firms have since entered the market.

Banking

The Korean banking sector is in the process of undergoing thorough and far-reaching structural reform as part of an agreed program between Korea and the World Bank. The objective of this reform is to ensure that the banking sector operates on a fully commercial, rather than an industrial policy or other non-commercial basis. The Korean Government has committed to refrain from interfering in bank lending and management decisions, except with regard to prudential supervision. During 1998, the Korean Government implemented a major opening of the capital markets to foreign participation. Foreign financial institutions will be allowed to participate in non-hostile mergers and acquisitions of domestic financial institutions. Foreign banks are currently allowed to establish subsidiaries or direct branches.

While a number of the restrictions on foreign financial institutions have been removed, Korea continues to place various limits on the scope of operations of direct branches of foreign banks based on local capital versus parent bank capital reserves. These limits affect (1) loans to individual customers; (2) foreign exchange trading and (3) foreign banks' capital adequacy and liquidity requirements. Foreign banks' operations are subject to lending ratios, requiring them to allocate a certain share of their loan portfolios to Korean companies other than the top five *chaebols* and to small and medium enterprises.

All banks in Korea continue to suffer from a non-transparent regulatory system and must seek approval before introducing new products and services, an area where foreign banks are most competitive. The foreign exchange market continues to be heavily regulated, with tight controls on the introduction of new instruments, a niche where again, U.S. banks would be especially competitive. Some restrictions on foreign exchange trading and capital inflows have been removed. For example, the Korean Government recently allowed foreign banks to increase their swap lines as a way to generate additional foreign exchange, but it remains unclear how long these increased lines will continue. For the present, the Korean Government has indicated that the existing lines will not be decreased for the foreseeable future and may even be increased. The interbank money market is still underdeveloped and is not a stable source of funding for foreign bank activities.

Foreign-based, non-financial businesses in Korea are subject to high-cost procedures and restrictions on their financial activities. Such restrictions are inappropriate for Korea’s level of development and financial sophistication. Virtually all intercompany transfers are subject to a foreign exchange bank’s certification and the requirement to settle via documentary trade finance methods. This process is cumbersome, costly, and unnecessary, particularly for transactions between subsidies.

Korean controls over transactions involving foreign exchange create high costs and excessive risks for multinationals operating in Korea and are disincentives to additional foreign investment. The Korean Government plans, however, to liberalize the foreign exchange control system, deregulating some controls over transactions involving foreign exchange, imports and exports. In September 1998, a new foreign exchange law was approved. The new law, scheduled to take effect in April 1999, calls for a two-stage deregulation of the foreign exchange market aimed at liberalization of primary corporate transactions, including, *inter alia*, capital transfers and bank certification requirements for settling trade finance. Full liberalization of these transactions is scheduled for the December 31, 2000. Beginning in July 1998, the Korean Government deregulated restrictions on capital transactions, including limitations placed on capital imports under deferred payment arrangements.

Securities

There has been considerable liberalization of the securities market in Korea, but foreign securities firms continue to face some non-prudential impediments to their operations. Foreign investment ceilings in Korean stocks have been almost entirely removed. There are no limits on foreign ownership of listed bonds or commercial paper. Restrictions on foreign ownership of any security traded in the local securities market have been lifted. In the case of state-owned companies, the limits now are 25 percent aggregate and one percent individual. These limits are scheduled to be raised, but not completely abolished.

INVESTMENT BARRIERS

The Government of Kim Dae Jung made a strong commitment to create a more favorable investment climate and, consequently, has pressed forward with a number of liberalizations designed to facilitate foreign investment. The centerpiece of this effort has been the new Foreign Investment Promotion Act (FIPA), which became effective on November 17, 1998 (replacing the previous Act on Foreign Direct Investment and Foreign Capital Inducement). The FIPA has (1) increased the number of business sectors that are open to foreign investment so that currently, only 13 remain closed and 18 partially closed to FDI; (2) broadened the scope of tax incentives available; (3) simplified procedures for making an investment and (4) established Foreign Investment Zones. As under the previous law, the Korean Government can only reject a foreign investor's notification if the activity appears on an explicit "negative list" or is somehow related to national security, the maintenance of public order or the protection of public health, morality or safety. The Korean Government is obligated to reject the notification within a certain number of days of filing or the investment is automatically approved.

Other measures which have liberalized the investment environment include the introduction of provisions allowing foreigners to purchase 100 percent of the target company's outstanding stock without consent of its board of directors (which was required until May 1998). The Korean Government also abolished the previous requirement for an investor wishing to purchase 25 percent or more of a publicly traded company's shares to make a tender offer bid to purchase more than 50 percent of the company's shares.

As noted above, capital market liberalizations have included elimination of the ceilings on aggregate foreign equity ownership and individual foreign ownership; lifting of the limits on foreign investment in the government, corporate and special bond markets and liberalization of foreign purchases of short-term financial instruments issued by corporate and financial institutions. With these liberalizations, foreign equity ownership up to 100 percent is permitted in many cases but not all. The Korean Government still maintains foreign equity restrictions with respect to investments in Pohang Iron and Steel Company (POSCO), KEPCO, Korea Telecom, many types of media, schools and beef wholesaling.

Restrictions on the direct purchase of land by foreigners have been removed by a revision to the Alien Land Registration Acquisition Act of 1998. However, parallel agricultural land-use laws were not amended: non-Koreans still cannot produce agricultural products for commercial purpose, nor can agriculturally zoned land be taken out of agricultural production.

Generally speaking, the liberalizations in Korea's investment regime combined with increased opportunities arising from restructuring of the corporate sector and privatization of government-invested corporations have increased U.S. investors' level of interest in Korea. In 1998, new U.S. foreign direct investment accounted for almost one-third of the $8.8 billion in total FDI coming into Korea, according to statistics provided by MOFE. However, additional changes are necessary to significantly improve Korea's attractiveness as a destination for foreign investment, including more extensive tax exemptions for foreign investment, enhanced flexibility in the labor market, improvement in intellectual property protection and a more transparent regulatory environment

Korea has not notified the WTO of any measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs).

ANTICOMPETITIVE PRACTICES

With the advent of the economic crisis, Korea's IMF program, and the Kim Dae Jung Administration, the importance of the Korean Fair Trade Commission's (KFTC's) role as enforcer of Korea's competition law and advocate of competition policy increased dramatically in 1998. The KFTC, with some input from the World Bank, made efforts in 1998 to strengthen the Fair Trade Act with the long term objective of installing a more transparent, rules-based system that is conducive to and consistent with a free and competitive market-based economy. As part of this exercise, the KFTC sought to revise the law to strengthen its penalty/deterrence regime, increase its investigatory powers and revise a range of laws which have permitted collusive behavior. This includes reining in powerful industry associations that have often abused their powers by discriminating against non-members and potential competitors, including U.S. firms. The revised Fair Trade Act passed the National Assembly in January 1999, but it is unclear how much it truly strengthened the KFTC.

The KFTC's deregulation task force has actively participated in the Administration's efforts to cut by nearly half the roughly 11,000 government regulations currently in force. Some of the implementing legislation was passed by the National Assembly in December, but other bills still are pending.

In 1998, the KFTC used its powers to investigate the *chaebol*s, particularly the five largest, to help the government to attain its corporate reform objectives. In the most noteworthy example, the KFTC imposed fines on the "Big Five" in July totaling approximately $60 million for illegally subsidizing subsidiaries. The *chaebols* are appealing this decision through the court system. In February of 1999, the KFTC also fined five mid-ranking *chaebol*s approximately $15 million for illegally subsidizing subsidiaries.

Despite the heightened level of enforcement activity by the KFTC, it still has a weak position in the Korean Government relative to the powerful industrial ministries. For competition policy to take root in Korea, a stronger KFTC is a prerequisite. The KFTC's opaque and arguably uneven application of the Fair Trade Law also undercuts its credibility in Korea and abroad. For example, the KFTC seems to be taking a rather passive attitude towards reviewing the so-called "Big Deals" (corporate swaps being pushed by the Korean Government), which would seem to raise competition policy issues in Korea. U.S. industries, including semiconductor and telecommunications firms, have raised concerns about reports that the Korean Government, as part of the "Big Deal," is spurring consolidation of different *chaebols'* business lines in a manner that impedes open competition in Korea.

ELECTRONIC COMMERCE

There are no reported trade restrictions on electronic commerce in Korea.

Korea passed the Electronic Commerce Basic Transaction Act on January 5, 1999. This act codifies authorization of electronic signatures as legally binding on consumers and businesses. Additionally, this act encourages private development of electronic commerce in Korea. Equally important is Korea's commitment not to impose customs duties on the flow of information by electronic means. This commitment also is indicated in the U.S./Korea Joint Statement on Electronic Commerce signed in November 1998. Thus, Korea is one of the few countries with which the United States has joint statements (the list includes, the European Community, France, the United Kingdom, the Netherlands, Japan and Ireland). These bilateral statements reenforce the commitment to having the private sector lead in fostering the growth of electronic commerce.

OTHER BARRIERS

Lack of Transparency

Many Korean trade-related laws and regulations lack specificity. Their implementation is directed by internal guidance, which is developed by the relevant ministries and rarely published. Despite this guidance, Korean port officials exercise a great deal of discretion in applying the broad rules in the laws and regulations. This leads to inconsistency of application and sometimes the most trade restrictive application, as well as uncertainty among business interests.

Imported food products remain particularly susceptible to capricious interpretation of ambiguously worded labeling and product categorization standards. Headquarter intervention is too often required to clear a product through port inspection, at great time and monetary cost to the importer and ultimately to the consumer.

The Korea Food and Drug Administration (KFDA) undertook an ambitious program last year to rewrite the country's vaguely worded food-related codes to bring them into conformance with international standards by the end of 1999. This effort is commendable. When completed, a significant number of product clearance problems should cease as port inspectors should be operating with clear guidance outlined in the revised Food Code, Food Additives Code and food labeling standards. The KFDA's approach to revamping Korea's food-related codes includes soliciting input from all available sources, both domestic and international, via employment of an extended comment period (70 days). Other agencies should emulate this model to bring clarity and transparency to their respective regulations to improve market access for both domestic and imported products, thereby benefitting Korean consumers.

In the past, the Korean Government has failed to produce advance or timely notice of changes to laws and regulations, either in domestic official publications or in the WTO. This has precluded interested parties from commenting on the effect of the proposed changes and made it difficult or impossible for foreign companies to adjust to the new rules when they are implemented.

Overall, some progress has been made on such transparency issues, but additional improvement still is necessary to ensure that lack of transparency no longer impedes trade.

Frugality Campaigns and Anti-import Bias

Frugality campaigns, ostensibly directed at individual consumption but effectively targeting imported goods, are another barrier that U.S. firms face in Korea. The Korean Government has denied involvement in the anti-import aspect of the frugality campaign, but U.S. firms complain that Korean officials have taken arbitrary actions that have impeded imports, and Korean Government agencies have regularly reported on imports of "luxury goods" such as sports equipment. However, in 1998, the Korean Government sent written notices to agencies and civic groups noting that an anti-import campaign was not helpful to Korea's efforts to overcome its economic crisis and warning against taking measures that could be perceived as discriminating against imports. Accordingly, in the 1998 U.S.-Korea MOU on trade in motor vehicles, Korea agreed to quickly address anti-import activity aimed at foreign vehicles, to work to preclude discrimination against imported vehicles, especially through tax audits, and to promote a better understanding among its citizens of the benefits to the Korean consumer and economy of free trade and open competition between foreign and domestic products, including motor vehicles.

President Kim Dae Jung has repeatedly called on Koreans to engage in "healthy consumption" and to base purchasing decisions on price and quality, rather than country of origin. However, a June poll by an international marketing firm revealed that 69 percent of Koreans still believed that purchasing foreign products hurts Korea. This persistent economic nationalism will continue to create fertile ground for frugality campaigns, particularly after the economy recovers and consumption resumes growth.

Internal Supports

Under the Uruguay Round, Korea agreed to reduce, in ten equal installments, its domestic support (AMS) for agricultural products from 2.182 trillion *won* in 1995, to 1.49 trillion *won* in 2004. If the Korean Government does not reduce its large domestic rice and beef purchases and pork and beef production incentives, it will have difficulty meeting its AMS commitments in coming years.

Motor Vehicles

In the October 1, 1997 Super 301 report to the Congress, the USTR identified Korean barriers to motor vehicles as a priority foreign country practice. Specific Korean practices of concern that were cited included an array of cumulative tariff and tax disincentives disproportionately affecting imports, onerous and costly auto standards and certification procedures, auto financing restrictions and a cumulative climate of bias against imported vehicles. On October 20, 1997, the USTR initiated a Section 301 investigation with respect to certain acts, policies and practices of the Government of the Republic of Korea that pose barriers to imports of U.S. autos into the Korean market.

After intense bilateral negotiations, on October 20, 1998, the U.S. and Korea concluded a Memorandum of Understanding (MOU) to improve market access for foreign motor vehicles. Under this MOU, Korea agreed to (1) bind in the WTO its 80 percent applied tariff rate at 8 percent; (2) lower some of its motor-vehicle-related taxes and to eliminate others; (3) adopt a self-certification system by 2002; (4) streamline its standards and certification procedures; (5) establish a new financing mechanism to make it easier to purchase motor vehicles in Korea and (6) continue to actively and expeditiously address instances of anti-import activity.

Following the negotiation of this MOU, the USTR determined that certain acts, policies and practices of the Government of Korea related to exports of U.S. motor vehicles are unreasonable and discriminatory and burden or restrict U.S. commerce, but recognized that the Korean Government had agreed to take several measures to resolve the matters under investigation. Thus, the USTR decided on October 20, 1998, to terminate the investigation and to monitor the Korean Government's implementation of these measures to eliminate those trade practices. The first formal review of Korea's implementation of the 1998 MOU will take place no later than April 30, 1999.

Korea

The Korean Government has undertaken structural reforms of its financial and corporate sectors as part of its macroeconomic stabilization plan. If implemented fully and faithfully, these reforms should ensure that the Korean motor vehicle sector operates according to market principles rather than industrial policy cues. The U.S. Government will continue to carefully monitor the status of these structural reforms to ensure that U.S. motor vehicle producers will face fair market-driven competition from their Korean competitors.

Pharmaceuticals

Korea's national health insurance system does not provide imported drugs with national treatment with respect to listing and pricing on the Korean national health insurance reimbursement schedule and discourages hospitals and other large end-users from buying imported drugs. The Korean system allows hospitals, clinics and pharmacies to profit from reimbursement from domestic products, but not from imported products. Dispensers of imported products also must comply with additional administrative procedures for reimbursement. Recently, some Korean hospitals have engaged in "buy national" behavior by delisting foreign pharmaceuticals from formularies and inventories.

U.S. pharmaceutical producers face other market access barriers in Korea including requirements for duplicative testing, lack of adequate and effective data protection against unfair commercial use and limitations on manufacturing. Finally, lack of coordination between Korean health authorities in MHW and KFDA and Korean IPR authorities allows manufacturers of patent infringing products to gain approval for the launch of their products into the Korean market to the commercial detriment to the holders of the patents.

The U.S. Government will continue to press the Korean Government on pharmaceuticals trade issues until U.S. concerns are fully and satisfactorily addressed.

Cosmetics

Impediments to entry and distribution of foreign cosmetic products in Korea include (1) KFDA approval required for imports of the same cosmetic products if they have different countries of origin; (2) the Korean Government's delegation of authority to the domestic industry association to screen advertising and information brochures prior to use; (3) mandatory provision of proprietary information on imports to Korean competitors; (4) redundant testing and (5) burdensome import authorization and tracking requirements. The U.S. Government cited Korea's cosmetics-related measures as a bilateral priority in the 1997 Super 301 report. (See also "Standards and Conformity Assessment Procedures" and "Advertising.")

The U.S. Government will continue to press the Korean Government on cosmetics trade issues until U.S. concerns are fully and satisfactorily addressed.

Steel

The United States has been concerned with the Korean Government's involvement in and support for the steel sector and for steel-using industries. These policies have led to substantial uneconomic investments in steel and related sectors, and resulted in substantial steel overcapacity, which has recently been severely exacerbated by the reduced demand for steel in Asia and elsewhere. Korean-Government-owned banks have extended substantial "soft loans" to several steel producers, apparently without regard for creditworthiness. Hanbo Steel, one of the largest recipients of such loans, declared bankruptcy in 1997. Hanbo's collapse is believed to be one of the leading causes of the financial crisis. In 1998, the U.S. and Korean Governments exchanged letters which made clear that the sale of Hanbo Steel would be market based and managed by a reputable international financial company.

The new Korean Government has indicated its intention to fundamentally change the policies discussed above and to remove government interference from the steel sector. In this regard, the Korean Government has announced its intention to privatize POSCO. The U.S. Government is closely monitoring the sale of Hanbo, as well as the ongoing privatization of POSCO, now the world's largest steel producer. The Korean Government has outlined a plan for market-based production and management of POSCO and for the sale of Korea Development Bank shares in the company by the end of 1999. Nevertheless, POSCO's size and current monopoly producer status in Korea of some key steel products continue to raise concerns of possible unfair and anticompetitive practices. The United States is urging the Korean Government to fully implement intended reforms and to vigorously implement competition laws, particularly in the steel sector where concerns have been raised over a number of years.

Telecommunications

In the past, U.S. equipment and services companies encountered a significant number and range of impediments in the Korean telecommunications sector. The Korean Government has targeted the telecommunications sector for industrial promotion, which explains the chronic nature of U.S. market access problems in this sector. Only a few U.S. firms operate in the Korean telecommunications service market as minority investors.

On July 26, 1996, USTR designated Korea as a Priority Foreign Country under Section 1374 of the 1988 Omnibus Trade and Competitiveness Act. Bilateral negotiations in 1997 resulted in an agreement that considerably clarified government policy and guarantees of non-interference in the procurement process. In a July 14, 1997, policy statement, Korea announced that (1) the government did not require use of local products when making decisions on licensing or spectrum allocation; (2) the licensing process would be transparent and non-discriminatory; (3) foreign firms would receive national treatment within the scope of Korea's commitments and in accordance with its obligations under the WTO and (4) private sector firms would be free to make their procurement decisions independently. The U.S. Government continues to bring any instances of non-compliance by Korea Telecom to the attention of the Korean Government.

Korea's commitments under the WTO Basic Telecommunications Agreement enhance opportunities for partial foreign ownership of Korean telecommunications operators. Because of the need for foreign investment in Korea, the government may accelerate the schedule for market opening measures agreed under this Agreement. (See also "Government Procurement.")

The current administration's efforts to expand foreign investment in telecommunications companies have encountered resistance from the National Assembly, which reflected popular fear of foreign investors obtaining management control of Korea's basic telecommunications service companies. In its accession to the WTO, Korea agreed to raise the ceiling on foreign equity ownership from 33 percent to 49 percent in 2001. The Korean Government proposed advancing the scheduled increase to 1998, but the relevant sub-committee rejected the proposal. The government plans to re-submit the proposal, and believes the Assembly will approve the increase in the second half of 1999, but it is not clear what implementation date will be selected.

The proposal did not apply to government-owned Korea Telecom (KT), in which the ceiling on foreign investment remains 20 percent.

U.S. industry has recently become concerned about press reports indicating that the Korean Government is pressuring private cellular telecom operators and wire-line companies to consolidate under the Big Deal programs. The Korean Government has indicated that it is not its policy to urge such consolidations. The U.S. Government will closely monitor the situation.

MALAYSIA

In 1998, the U.S. trade deficit with Malaysia was $10.0 billion, an increase in the trade deficit of $2.9 billion from the U.S. trade deficit of $7.2 billion in 1997. U.S. merchandise exports to Malaysia were approximately $9.0 billion, a decrease of $1.9 billion (17.3 percent) from the level of U.S. exports to Malaysia in 1997. Malaysia was the United States'18th largest export market in 1998. U.S. imports from Malaysia were about $19.0 billion in 1998, an increase of $984 million (5.5 percent) from the level of imports in1997. The stock of U.S. foreign direct investment (FDI) in Malaysia in 1997 was $5.6 billion, an increase of nearly 6.1 percent from the level of U.S. FDI in 1996. Such investment was concentrated in Malaysia's manufacturing, energy, and financial sectors.

IMPORT POLICIES

Tariffs are the main instruments used to regulate the importation of goods in Malaysia. However, 17 percent of Malaysia's tariff lines (principally in the construction equipment, forestry, logging, agricultural, mineral, and motor vehicle sectors) are also subject to non-automatic import licensing designed to protect import-sensitive or strategic industries. Although the average applied MFN tariff rate of Malaysia has declined to approximately 8.1 percent, duties applicable to goods for which there is significant local production are often higher. For example, 15.8 percent of product tariff lines in Malaysia's tariff schedule have rates over 24 percent, 25.9 percent of tariff lines have rates over 15 percent, and several lines have rates well over 100 percent.

The level of tariff protection is generally lower on raw materials and increases for those goods with value-added content or which undergo further processing. During the current economic downturn, the Malaysian Government has urged Malaysians to purchase domestic products, instead of imports, whenever possible. Malaysia has been an active participant in multilateral and regional trade fora such as the World Trade Organization (WTO) and Asia-Pacific Economic Cooperation (APEC), and chaired APEC in 1998.

Import Restrictions on Motor Vehicles

Malaysia maintains several measures to protect the local automobile industry, including high tariffs and an import quota and licensing system on motor vehicles and motor vehicle parts. In order to qualify for certain tax/tariff incentives for domestic production, companies are required to satisfy local content requirements of 45 to 60 percent for passenger and commercial vehicles, and 60 percent for motorcycles. The Malaysian Government has announced that local content restrictions will be phased out by the year 2000 in accordance with its commitments under the WTO Agreement on Trade-Related Investment Measures (see "Investment Barriers" below). These measures have restricted the ability of U.S. firms to penetrate the Malaysian market. Custom tariffs and excise duties (up to 50 percent) for motorcycles are also significant barriers for U.S. companies. Malaysia is also considering new emissions standards for motorcycles which could restrict market access opportunities for imports.

Malaysia's 1988 fiscal year budget increased tariffs on a range of motor vehicles. The following table indicates the general range of the tariff rate increases, although the specific tariff increase depends on engine capacity.

Product Description	Applied Tariff Prior to FY 1998 Budget (%)	Current Applied Tariff (%)
Automobiles (CBU)	140-200	140-300
Automobiles (CKD)	42	80
Vans (CBU)	32	42-140
Van (CKD)	5	40
4wd/multipurpose (CBU)	50	60-200
4wd/multipurpose (CKD)	n/a	40
Motorcycle (CBU)	60	80-120
Motorcycle (CKD)	5	30

Restrictions on Construction Equipment

In October 1997, Malaysia imposed a restrictive licensing regime on imports of heavy construction equipment and raised import duties, as detailed below. In October 1996, it had raised duties on construction equipment from 5 to 20 percent. In addition the initial capital allowance tax deduction for imported heavy equipment will be reduced from 20 to 10 percent in the first year, and the annual allowance was reduced from between 12 percent and 20 percent to 10 percent.

Product Description	Applied Tariff Prior to FY 1998 Budget (%)	Current Applied Tariff (%)
Heavy Machinery & Equipment	0	5
Multi-purpose Vehicles	36248	50
Special Purpose Vehicles	35	50
Construction Materials	36304	36462

Duties on High Value Food Products

Duties for processed and high value products, such as canned fruit, snack foods, and many other processed foods, range between 20 and 30 percent. The applied tariff on soy protein concentrate is 20 percent.

Duties on Alcoholic Beverages

Already high tariffs applicable to alcoholic beverages were increased in October 1998 (applicable tariffs are reflected below in Malaysian Ringitt (RM)).

Product Description	Pre-Oct. 1998 Tariff Rate (RM/dal)	Current Applied Tariff Rate (RM/dal)
Beer	74	89
Wine	100	120
Vermouth	100	120
Mead	98	118
Brandy	489	587
Liqueurs	82-100	98-100

Plastic Resins

In December 1993 Malaysia increased tariffs on some plastic resins from 2 to 30 percent for a five-year period. In late 1998 the tariff was lowered, however the current 20 percent tariff rate is still restrictive.

Tariff-Rate Quota for Chicken Parts

Although the government of Malaysia applies a zero import duty on chicken parts, imports are regulated through licensing and sanitary controls, and import levels remain well below the minimum access commitments established during the Uruguay Round.

Float Glass Tariff

Malaysia levies high duties on rectangular-shaped float glass of 65 sen per kilogram. In mid-1998, in an effort to ensure that importers cannot take advantage of the tariff differential on non-rectangular glass, Malaysian customs officials began to classify all float glass with an approximate rectangular shape as rectangular for duty purposes. This new rate equates to a 60-110 percent *ad valorem* tariff rate.

Rice Import Policy

The sole authorized importer of rice is a government corporation (Bernas) with the responsibility of ensuring purchase of the domestic crop and wide power to regulate imports.

Film and Paper Product Tariffs

Malaysia applies a 25 percent tariff on imported instant print film that is estimated to cause an annual trade loss of $10-$25 million for U.S. industry. In August 1994, the Malaysian Government raised tariffs on several categories of imported kraft liner board to between 20 and 30 percent, depending on the category. These tariff increases are subject to review every two years and were to be phased out after five years. The 1998 review reduced tariffs to 10 percent for all categories. Malaysian officials have indicated that there are no plans to phase out the tariffs in 1999.

Direct Marketing Companies

In 1998, Malaysia began to implement a policy requiring direct marketing companies to source a minimum of 80 percent of their product line locally as a condition for annual license renewal. Malaysia has also proposed to enforce more rigidly guidelines limiting foreign participation in the wholesale and retail trade sectors. As a condition of license renewal, Malaysian Government officials have also proposed restricting foreign equity to a maximum of 51 percent regardless of a company's current equity structure. License duration has been restricted to one year for most firms. The Ministry of Domestic Trade and Consumer Affairs has indicated that it may grant exceptions to these rules on a case-by-case basis. The United States urges Malaysia to implement a transparent regulatory system for the direct selling sector which does not impede trade, require established companies to divest involuntarily, or deter the entry of new market participants.

GOVERNMENT PROCUREMENT

Malaysia is not a party to the WTO Government Procurement Agreement. Malaysian Government policy calls for procurement to be used to support national objectives such as encouraging greater participation of bumiputras (ethnic Malays) in the economy, transfer of technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the service sector, and enhancing Malaysia's export capabilities. As a result, foreign companies do not face a level playing field in competing for contracts and in most cases are required to take on a local partner before their bid will be considered. Some U.S. companies have voiced concerns about the transparency of decisions and decision making processes.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Malaysia is a member of the World Intellectual Property Organization (WIPO), the Berne Convention for the protection of literary and artistic works, and the Paris Convention. Malaysia provides copyright protection to all works (*inter alia* video tapes, audio material, and computer software) published in Berne Convention member countries regardless when the works were first published in Malaysia. Trademark infringement and patent protection have not been serious problem areas in Malaysia for U.S. companies. In March 1998, the Malaysian Government opened an intellectual property training center to develop and offer programs for government officials, agencies, attorneys, and the judiciary.

Police and legal authorities are generally responsive to requests from U.S. firms for the investigation and prosecution of retail-level copyright infringement cases. However, enforcement actions against organized, pirated production have served only to interrupt and not deter commercial-scale copyright infringement. In contrast, Malaysian officials have been responsive in working with industry to suppress end-user piracy of software. Joint government-industry end user anti-piracy campaigns and increased enforcement efforts reduced packaged computer software piracy to 70 percent in 1997, a 10 percent decline from 1996. Nevertheless, the widespread presence and frequency of pirated copyrighted works fixed on optical disks (including music and video CDs and CD-ROMs) has increased. U.S. industry reports that there are currently 22 optical disk factories with 90 production lines operating in Malaysia, with an estimated annual production capacity of 315 million units -- a figure that far exceeds local demand and authorized exports. More troubling still is the growing amount of pirated optical media found in markets worldwide which originated in Malaysia.

Although the Malaysian Government nominally regulates the establishment of OD plants by requiring a business license in order to operate, there is no systematic monitoring of plants to ensure that they are engaged in lawful activities. Pirated OD production has resulted in a flood of infringing products throughout Southeast Asia, and as far away as Europe and Latin America. The United States strongly urges the Malaysian Government to make combating optical disk piracy a top priority and to establish a legal framework for the effective regulation of OD production. Suppressing digital piracy is consistent with the Malaysia Government's objective to establish Malaysia as the preeminent locus of high-technology manufacturing and innovation in Asia.

Aspects of judicial and prosecutorial practices in Malaysia pertaining to IPR infringement also contribute to the high rates of piracy. Court dockets in the past have been backlogged; however, judicial efficiency appears to be improving. U.S. industry groups remain concerned, however, that while an infringement case is pending, known pirates are often released and resume IPR infringement. When litigation does result in penalties, courts rarely impose criminal sentences which undermines the deterrent effects of IPR enforcement. Penalties sought by Malaysian Government prosecutors are often inconsistent, resulting in different penalties for essentially similar charges of IPR infringement. Prosecutors also regularly fail to seek maximum allowed penalties. However, the Malaysian Attorney General in March 1998 directed prosecutors to file appeals for all copyright infringement cases in which courts imposed fines of less than RM1000. The effect of Malaysian enforcement efforts would be enhanced through the establishment of clear orders for enforcement officials to seize OD replicating equipment from factories caught producing pirated works and by clarifying rules pertaining to affidavits submitted by IPR owners and their resident legal representatives in Malaysia.

SERVICE BARRIERS

Basic Telecommunications

Under the WTO Basic Telecommunications Agreement, Malaysia made limited commitments on most basic telecommunication services and partially adopted the reference paper on regulatory commitments. Malaysia guaranteed market access and national treatment for these services only through acquisition of up to 30 percent of the shares of existing licensed public telecommunications operators, and limits market access commitments to facilities-based providers. At least two U.S. firms have investments in basic and enhanced telecommunications sectors.

Legal Services

Foreign lawyers may not practice Malaysian law or operate as foreign legal consultants, nor can they affiliate with local firms or use their international firm's name. Under the Legal Profession Act of 1976, the practice of Malaysian law is normally restricted to Malaysian citizens or permanent residents who have apprenticed with a Malaysian lawyer, are competent in Bahasa Malaysia (the official language), and have a local law degree or are an accredited British barrister at law. The Attorney General has authority to grant limited exceptions on a case-by-case basis, provided the applicant has seven years legal experience. Malaysian lawyers are required to practice in partnerships or sole proprietorships. Malaysian law does not allow for foreign legal consultancy, except on a limited basis in the Labuan International Offshore Financial Center. Persons not licensed as lawyers are subject to criminal penalties if they directly or indirectly undertake activities relating to the Malaysian legal system, including drafting documents.

Architectural Services

Foreign architectural firms can operate in Malaysia only as a joint venture on a specific project with the approval of the Board of Architects. Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architects may not be licensed in Malaysia but are allowed to be managers, shareholders, or employees of Malaysian firms. Only licensed architects may submit architectural plans.

Engineering Services

Foreign engineers may be licensed by the board of engineers only for specific projects, and must be sponsored by the Malaysian company carrying out those projects. The license is only valid for the duration of the project. In general foreign engineers must be registered as a professional engineer in his or herb home country, have a minimum of 10 years experience, and have a physical presence in Malaysia of at least 180 days in one calendar year. To obtain temporary licensing for a foreign engineer, the Malaysian company must often demonstrate to the board that they cannot find a Malaysian engineer for the job. Foreign engineers are not allowed to operate independently of Malaysian partners, or serve as director or shareholder of a consulting engineering company. A foreign engineering firm can establish a non-temporary commercial presence if all directors and shareholders are Malaysian. Foreign engineering companies can collaborate with a Malaysian firm, but the Malaysian company is expected to design and required to submit the plans.

Accounting and Taxation Services

Foreign accounting firms can provide accounting and taxation services in Malaysia only through affiliates. All accountants who wish to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants (MIA) before they can apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration, and only degrees from local universities are recognized. Malaysian citizens or permanent residents who are members of at least one of the 11 recognized overseas professional bodies recognized by Commonwealth countries may also apply. However, the MIA has indicated that it is considering whether to allow members of the American Institute of Certified Public Accountants (AICPA) to become members of the MIA and provide services in Malaysia, subject to Malaysian examination procedures. The Institute is still evaluating whether all AICPA members will be allowed to take the exam, or whether this will be restricted to only those AICPA members which are nationals or permanent residents of Malaysia.

Banking

No new licenses are being granted to either local or foreign banks; foreign banks must operate as locally incorporated subsidiaries, and may be wholly foreign owned. Foreign companies are required to obtain 60 percent of their local credit from Malaysian banks.

Insurance

Branches of foreign insurance companies were required to incorporate locally under Malaysian law by June 30, 1998, however the Government has made individual extensions. Foreign share holding exceeding 49 percent is not permitted unless the Malaysian Government approves higher share holding levels. During the WTO Financial Services negotiations, Malaysia committed to allow existing foreign shareholders of locally incorporated insurance companies to increase their share holding to 5 percent upon entry into force of the WTO Financial Services Agreement. New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies and aggregate foreign share in such companies may not exceed 30 percent.

Securities

Foreigners may hold up to 49 percent of the equity in a stockbroking firm. Currently there are 11 stockbroking firms which have foreign ownership and 20 representative offices of foreign brokerage firms. Fund management companies may be 100 percent foreign-owned if they provide services only to foreign investors, but they are limited to 70 percent foreign-ownership if they provide services to both foreign and local investors.

Advertising

Foreign content or film footage is restricted to a maximum of 20 percent per commercial, and only Malaysian actors may be used. The Government of Malaysia has an informal and vague guideline that commercials cannot "promote a foreign lifestyle." Advertising of alcohol and cigarette products is severely restricted.

Audio-Visual and Broadcast

The Malaysian Government maintains broadcast content quotas on both radio and television programming. Sixty percent of television programming is required to originate from local production companies owned by ethnic Malays. This share is scheduled to increase to 80 percent by the year 2000. Sixty percent of radio programming must be of local origin. The Malaysian Ministry of Information announced in January 1998 that it would study the use of the Broadcasting Act of 1958 as the means of imposing further conditions on television stations to provide additional air time to local programming. The Broadcasting Act is expected to be replaced in April 1999 by a new law, the Communications and Multimedia Act, which calls on industry groups to establish content standards and could be the basis for modification of existing local content restrictions. Foreign investments in terrestrial broadcast networks are strictly prohibited. As a condition for obtaining a license to operate, video rental establishments are required to have 30 percent local content in their inventories.

INVESTMENT BARRIERS

Malaysia encourages direct foreign investment particularly in export-oriented manufacturing and high-tech industries, but retains considerable discretionary authority over individual investments. The Malaysian Government has used this authority to restrict foreign equity (normally to a maximum of 30 percent) and to require foreign firms to enter into joint ventures with local partners. To alleviate the current economic downturn, Malaysia announced it will relax foreign-ownership and export requirements in the manufacturing sector until December 31, 2000 for those companies producing goods that do not compete with local producers. Malaysia for several years has confronted a shortage of workers in its market. Although this situation has been eased recently due to the economic downturn, foreign companies experience difficulty with the efficient operation of manufacturing facilities due to the unavailability of workers. Malaysia is reluctant to address the labor shortage by allowing foreign workers to enter the country. In addition, foreign firms also face restrictions in the number of expatriate workers they are allowed to employ.

Trade-Related Investment Measures

Malaysia has notified the WTO of certain measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The measures deal with local content requirements in the automotive sector and use of export-performance as a criterion for foreign investors receiving preferential tax treatment. Proper notification allows developing country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Malaysia, therefore, is required to eliminate these measures before January 1, 2000.

ELECTRONIC COMMERCE

Malaysia currently applies no special restrictions on products or services traded via electronic commerce. Products which are ordered via the Internet and subsequently imported are subject to applicable import duties. Engineering services may not be provided via Internet unless the engineer is properly licensed.

OTHER BARRIERS

U.S. companies have indicated that they would welcome improvements in the transparency of Malaysian Government decision-making and procedures, and limits on anti-competitive practices. A considerable proportion of government projects and procurement are awarded without transparent, competitive bidding. The Malaysian Government has declared that it is committed to fighting corruption. To promote that objective, Malaysia maintains an anti-corruption agency that is part of the Office of the Prime Minister. The agency has the independent power to conduct investigations and is able to prosecute cases with the approval of the attorney general.

MEXICO

In 1998, the U.S. trade deficit with Mexico was $15.7 billion, an increase of $1.2 billion from the deficit of $14.5 billion in 1997. U.S. merchandise exports to Mexico were $79.0 billion in 1998, an increase of 10.7 percent from the same period in 1997. Imports from Mexico were $94.7 billion in 1998, an increase of 10.3 percent over the level of imports in 1997. The stock of U.S. foreign direct investment (FDI) in Mexico in 1997 was $25.4 billion, an increase of 27.6 percent from 1995. U.S. FDI is concentrated largely in the manufacturing and financial sectors.

North American Free Trade Agreement

Trade with Mexico is largely governed by provisions of the North American Free Trade Agreement (NAFTA), which entered into force on January 1, 1994. The NAFTA progressively eliminates tariffs and nontariff barriers to trade in goods; improves access for services trade; establishes rules for investment; strengthens protection of intellectual property rights; and creates an effective dispute settlement mechanism. The NAFTA is accompanied by supplemental agreements which provide for cooperation on enhancing and enforcing labor and environmental standards in North America.

IMPORT POLICIES

Tariffs

Under the terms of the NAFTA, Mexico will eliminate tariffs on all industrial and most agricultural products imported from the United States within 10 years of implementation of the agreement. Remaining tariffs and nontariff restrictions on certain agricultural items will be phased out by January 1, 2008.

The NAFTA parties implemented the sixth annual regular tariff reductions on January 1, 1999. This reduced Mexico's average duty on U S. goods from 10 percent prior to the NAFTA to below two percent. For 1999, about 70 percent of U.S. manufactured goods enter Mexico duty free. In 1998, the NAFTA countries completed a trilateral agreement to accelerate tariff elimination of several hundred goods covering nearly $1 billion in trilateral trade, most of it between the United States and Mexico.

On January 1, 1999, Mexico increased most of its MFN import tariffs by three percentage points for capital and intermediate goods and 10 percentage points for consumer goods. These increased rates do not apply to goods from the United States or other countries that have free trade agreements with Mexico. The tariffs were increased to generate additional revenue for the government, to partially offset declining revenues due to low oil prices.

In November 1998, Mexico published new regulations for the maquiladora sector. Under NAFTA, beginning in 2001, Mexico can no longer waive import duties for non-NAFTA products that are processed in Mexico and exported to a NAFTA partner. The new regulations stipulate that in 2001 a maquiladora company that exports its final product to the United States or Canada will have to pay the Mexican Government, within 60 days of export, import duties for the product’s non-NAFTA inputs. Furthermore, starting in 2001, the maquiladora industry will have to pay duties on all imported capital goods. In a related measure, Mexico published regulations for Sectoral Promotion Programs, which will take effect in November 2000. Under the Sectoral

Promotion Programs, manufacturers of certain electronic and electric products will be able to import specified inputs at reduced MFN rates. The reduced import duties will be available to all manufacturers, not just exporters, but will not be available to other importers, such as retailers. The United States is reviewing these new regulations.

Antidumping Actions

Mexico is a frequent user of anti-dumping measures. The United States has raised its concerns regarding the Mexican Government's application of antidumping measures on U.S. exports of high fructose corn syrup (HFCS). The U.S. Government held WTO consultations with Mexico regarding its final antidumping measure on HFCS in June 1998. A dispute settlement panel was established by the World Trade Organization on 25 November 1998. U.S. exporters are challenging Mexico's measure under the Chapter 19 provisions of the NAFTA. U.S. HFCS exporters also filed a Section 301 petition with USTR on March 25, 1998, alleging that the policies and practices of the Government of Mexico are unreasonable and deny fair and equitable market opportunities for U.S. exporters. USTR accepted the petition on May 15, 1998. The investigation must be concluded within 12 months of initiation.

Other important U.S. products which were targeted by Mexican anti-dumping actions in 1998 included U.S. bond paper, apples, hogs for slaughter, and cattle, beef and beef offal. For apples, after imposition of preliminary antidumping margins that effectively stopped trade, the case was settled in May 1998 by a suspension agreement which set minimum mandatory prices for U.S. red and golden delicious apples. In the hog and beef/cattle cases, the Secretariat of Commerce and Industrial Development (SECOFI) announced on October 21, 1998 that it had initiated investigations of both cases, but no final decision has yet been announced.

U.S. exporters have also complained about anti-dumping orders on steel products, notably the expansion of a prior order to cover certain zinc-iron coated carbon steel.

Administrative Procedures and Customs

U.S. exporters continue to register complaints about certain aspects of Mexican customs administration, including the lack of sufficient prior notification of procedural changes, inconsistent interpretation of regulatory requirements for imports at different border posts, new requirements that particular goods may enter only through certain ports, and discriminatory and capricious enforcement of Mexican standards and labeling rules. Complications and confusions have occasionally resulted in the application of harsh penalties for technical customs law violations committed as a result of simple mistakes rather than an attempt to evade Mexican customs rules. Agricultural exporters note that Mexican inspection and clearance procedures for some agriculture goods are long, burdensome, non-transparent, and unreliable. The Customs Reform Law that came into effect in April 1996 gave Mexican customs authorities the right to act in cases of suspected violations of intellectual property rights; however, they do not have the authority to seize goods on their own initiative. Several U.S. exporters have voiced concerns about border procedures in this area.

Mexico implemented a reference price system for certain imports in 1994, and has continued to expand the number of goods subject to reference prices. Through 1998, a company could import products at prices below the reference price by posting a bond until the exporter confirmed its invoice price. However, in April 1999, Mexico will require that an importer deposit, for at least six months, a cash payment covering the difference between the invoice and reference price. In 1998 Mexico implemented a preshipment-inspection requirement

for sensitive products from certain countries. U.S. origin goods are subject to the reference price system, but not the preshipment-inspection requirement. The United States is reviewing Mexico's reference price system.

For certain sensitive processed foods, the Secretariat of Health administers an import authorization program which requires that, prior to importation, all documents pertaining to the transaction, i.e. invoice, bills of lading, etc., be presented as originals at the Secretariat of Health's central offices in Mexico City. The U.S. raised this issue at the NAFTA sanitary and phytosanitary (SPS) meeting in November 1998, because it adds unnecessary costs and delays to the import process. For live U.S. pigs for slaughter, Mexican producers stopped imports by blockading crossing points in December 1998. The Government finally succeeded in convincing the farmers to end the blockade. However, the Secretariat of Agriculture responded by reducing the number of hog shipments it would inspect by about a third.

The United States has sought to harmonize the personal duty exemption limits for tourists returning from a NAFTA country. For the United States, the limit is $200 per crossing, with one $400 entry allowed each 30 day period. Mexico's per-crossing limit is $50 for land crossing or $300 for air/sea crossings. Mexico also provides a monthly limit of $400 per person in goods for personal use by border residents and permits pooling by family members. In 1998, Mexico began providing new electronic Personal Exemption Cards for border residents. These cards should promote the use of the personal duty exemptions and streamline customs clearance for returning residents. Mexico expects the system to be implemented at all ports in early 1999.

Safeguard Action

On August 1, 1996, the U.S. International Trade Commission (USITC) determined that pursuant to Section 202 of the Trade Act, broom corn brooms were being imported into the United States in such increased quantities as to be a substantial cause of serious industry to the U.S. broom corn broom industry and that, pursuant to Section 311 of the NAFTA Implementation Act, imports of broom corn brooms produced in Mexico accounted for a substantial share of total imports of such brooms and contributed importantly to the serious injury caused by such imports. Under a global safeguard action, on November 28, 1996, the President proclaimed tariff relief for three years on imports of two categories of broom corn brooms. In response, on December 12, 1996, Mexico retaliated against the U.S. safeguard action by increasing preferential import duties on eight U.S. products (fructose, wine, wine coolers, brandy, Tennessee whiskey, notebooks, flat glass and wooden furniture). The United States believes that Mexico's retaliation was excessive in that its action penalized U.S. exports to a greater extent than the U.S. action affected Mexican broom exports. The United States therefore requested consultations under the dispute settlement provision of the NAFTA concerning Mexico's retaliatory actions. In turn, Mexico requested the establishment of a NAFTA Chapter 20 dispute panel to review the U.S. broom corn brooms safeguard action. The final report of the panel was released on February 11, 1998, with a finding in favor of Mexico based on a technical flaw in the United States' injury determination. Based on a subsequent USITC review of the adjustment efforts of the domestic broom corn broom industry, the President issued a Proclamation on December 3, 1998, nullifying the safeguard action. Mexico lifted its retaliatory measures on January 1, 1999.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Standards

Mexican sanitary and phytosanitary standards have created barriers to exports of certain U.S. agricultural goods, including grains, potatoes, apples, stone fruit, Florida citrus and meat. However, the NAFTA Sanitary and Phytosanitary Measures Committee resolved SPS issues surrounding citrus from Arizona and cherries, and the U.S. Government maintains an ongoing dialogue in the Committee to resolve other issues. In addition to product-specific rules, the Mexican process for establishing 'emergency' phytosanitary standards has disrupted trade, since such 'emergencies' do not follow the normal rule-making and notification process, which includes public comment periods. The United States remains concerned about the far-reaching extent of some sanitary and phytosanitary import regulations, such as those for grains and meat. This includes, in particular, a new animal health standard for imported poultry products which will be implemented in early 1999. Procedural requirements regarding SPS inspections at the Port-of-Entry often do not reflect agreements reached between U.S. Department of Agriculture (USDA) officials and their Mexican counterparts, resulting in unnecessary delays at the border, seaports, and airports.

Conformity Assessment Procedures

Mexico's Law on Metrology and Standardization mandates that products subject to technical regulations ("Normas Oficiales Mexicanas" (NOMs)) be certified by Mexico's Direccion General de Normas (DGN) or an authorized independent certification body. Until 1998, only Mexican entities could qualify for recognition as competent to perform conformity assessment. The requirement to perform testing in Mexico-based laboratories has added cost and uncertainties for U.S. suppliers. Particular difficulty was experienced in sectors where Mexican technical capability is non-existent or insufficient to meet the demand, or where that capability resides solely in the laboratories of competing manufacturers. On January 1, 1998, Mexico's NAFTA obligation to accredit or otherwise recognize U.S. and Canadian bodies no less favorably than Mexican entities took effect. However, as of March 1999, no U.S. conformity assessment body had been accredited in Mexico.

On May 20, 1997, Mexico published amendments to its Law on Metrology and Standardization which took effect on August 1, 1997. Among other things, the amendments foresee the privatization of SECOFI's accreditation program. In January 1999 the Mexican Government authorized the private sector Mexican Accreditation Entity to provide accreditation services for the range of conformity assessment activities.

On October 24, 1997, SECOFI published revisions to its product certification procedures for the mandatory standards under its authority. Under the previous policies, a foreign manufacturer could not directly obtain any form of certification for its product. Instead, each importer of the same product had to submit the product for testing and certification, regardless of whether or not a certification had already been obtained by another importer. On the other hand, Mexican manufacturers can simply submit products for evaluation and certification on a periodic basis to obtain product certification, and then they can distribute the product for sale throughout the country. The inability of foreign manufacturers to obtain a certification with the same ease that Mexican manufacturers can obtain product certification has caused numerous problems and costs for U.S. exporters who frequently rely upon multiple importers, as well as for exporters who wish to change their importers or distributors.

Under the revised procedures, foreign manufacturers can obtain a "product ruling" (dictamen) for a product based upon the definition of a product family, which can be used by each importer of the product to obtain the product certification. However, this dictamen can only be obtained by a foreign manufacturer if it obtains quality system registration to ISO 9000 criteria from an accredited Mexican quality system registrar. A provision exists for accepting a quality system registration by a foreign organization, but only if a mutual recognition agreement exists between the organizations. It appears likely that this option provided to foreign manufacturers will only be advantageous to a very small number of manufacturers, forcing most importers to continue obtaining separate product certifications for the same products from the same manufacturers.

Labeling Requirements

Changes in Mexico's mandatory labeling requirements have been the subject of frequent discussions, both bilaterally and within the NAFTA Committee on Standards Related Measures. In particular, implementation of NOM-050 and NOM-051 on labeling of consumer products and prepackaged foods and non-alcoholic beverages, respectively, affects a broad range of industries. The difficulty and the costs that companies have experienced in complying with the new labeling standards have, in some cases, disrupted their exports to Mexico or caused them to reduce the number of products they export to Mexico.

GOVERNMENT PROCUREMENT

Although Mexico had agreed under the NAFTA to complete its list of services excluded from NAFTA coverage by July 1, 1995, the United States and Canada continue to work to reduce Mexico's overly-extensive draft list.

Under the NAFTA, government procurements which are subject to NAFTA provisions must be open for a minimum time period consistent with Article 1012, and that allows companies to make meaningful submissions. Generally, the period for the receipt of tenders is to be no less than 40 days from the date of publication of an RFP. Many Mexican procurements are not complying with the 40 day requirement. The Department of Commerce has received complaints from private industry, especially manufacturers of high-tech equipment, that the short deadlines do not allow sufficient time to prepare responsive bids. The United States has joined the Government of Canada in seeking clarification on this issue within the NAFTA context, and is currently waiting for the Government of Mexico to issue a response.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Under the NAFTA and the WTO, Mexico is obligated to implement and enforce a very high level of intellectual property rights (IPR) protection. Notable achievements include issuing regulations in May 1998 implementing the 1996 copyright law, and announcement by the Government of Mexico on November 11, 1998, of an anti-piracy campaign.

The number of search and seizure actions undertaken by the PGR (Mexican federal Attorney General's office) in 1998 increased, but prosecution of IPR crimes remains uneven. Mexico and the United States in 1996 created a bilateral working group on IPR to discuss enforcement and other matters. The group did not meet in 1998. The United States is prepared to re-engage in meaningful discussions.

Copyright

The Government of Mexico passed a copyright law on December 24, 1996, which addressed a number of inadequacies in the former law. The new law substantially increased protection for computer programs, textile designs and several other types of copyrighted material. Criminal penalties in several areas were increased, and some administrative procedures were introduced as well. The legislation, while meeting many of Mexico's obligations under the NAFTA and TRIPs, fell short in significant areas, including criminal penalties. However, subsequent modification of the law brought commercial piracy of sound recordings under coverage of criminal law. While the newest law appears to provide a satisfactory legal framework, in practice, criminal penalties have been infrequent and mild. In November, 1998, the Mexican administration submitted a proposal to the Mexican Congress to increase criminal penalties for certain copyright and trademark violations, and to reclassify copyright and trademark piracy as a felony (delito grave).

Copyright piracy remains a major problem in Mexico, with U.S. industry loss estimates continuing to increase. Pirated sound recordings and video cassettes are readily available throughout Mexico. The International Intellectual Property Association (IIPA) estimates that trade losses due to copyright piracy in Mexico in 1997 totaled $469 million. The U.S. copyright industry notes that in spite of numerous raids by legal authorities and extensive confiscation of pirated material (for example a January 1998 raid netted 30,000 pirated video cassettes), few convictions have resulted, and in no instance has a pirate served a jail sentence.

Patents and Trademarks

Patents and trademarks are under the jurisdiction of the Mexican Institute of Industrial Property (IMPI), a free-standing body. An increasing number of raids have been conducted in recent years, and use of administrative remedies are increasingly useful to U.S. trademark owners. Nonetheless, many U.S. trademark holders have encountered difficulties in enjoining former subsidiaries and franchisees from using their trademarks. U.S. firms have reported experiencing difficulty in enforcing their trademark rights when a Mexican entity has registered them, even when registration was under a different category. These anecdotal reports indicate problems are occurring, but not on a large scale.

Plant Varieties

In 1996, as required by the NAFTA, the Mexican Government approved the Plant Varieties Protection Act, and in August 1997 acceded to the international convention for the protection of new varieties of plants

(UPOV). Implementing regulations are still pending, however. The NAFTA also required Mexico to begin accepting, on January 1, 1994, applications from plant breeders for varieties in all plant genera, and to promptly grant protection. On September 24, 1998, Mexico published its implementing regulation which requires that plant varieties new to Mexico must be registered with both the National Plant Variety Registry and the National Seed Certification and Inspection Service.

Border Enforcement

NAFTA article 1718 required Mexico to have adopted by December 1995, procedures to allow U.S. rights holders to request that Mexican customs authorities suspend release of goods with counterfeit trademarks or pirated copyright goods. In December 1995, Mexico's customs law was amended to grant its customs service authority to detain infringing products. Several U.S. firms have complained that the procedure for obtaining protection via Mexican customs authorities is complicated, for a variety of reasons, including the fact that Mexican law does not recognize its customs service as an authority competent to decide infringement issues. Intellectual property rights owners seeking to use customs resources to prevent importation of infringing goods must obtain, from a competent authority, an order which directs custom officials to detain the merchandise. Thus far, few companies have requested this type of action, but those which have report positive outcomes.

Film Dubbing

In December 1992, Mexico promulgated film industry legislation that contained a troublesome provision against film dubbing. In particular, under the provision, only children's films and documentaries may use dubbing; all other films are restricted to using sub-titles. Because some viewers prefer dubbed films, however, this provision acts as a barrier to U.S. (English language) films. In January 1999 Mexico substantially revised the film law, but retained the dubbing restriction.

SERVICES BARRIERS

Land Transportation Services

U.S. express delivery firms are experiencing significant difficulties in receiving the national treatment that Mexico is obligated to provide to them under the NAFTA. Mexico has not yet granted full operating authority to U.S. firms in this sector. This issue has been the subject of bilateral consultations between the U.S. and Mexican Governments, including formal consultations at both the staff and ministerial level, pursuant to the dispute resolution procedures of Chapter 20 of the NAFTA.

Telecommunications

Prior to implementation of the NAFTA, Mexico had taken steps to reform its telecommunications sector, including privatizing Telefonos de Mexico (Telmex), the national telephone company; liberating foreign investment rules in most telecommunications services; introducing competition in some telecommunications service sectors; and restructuring the sector's regulatory entities. Mexico implemented a new telecommunications law in June 1995 codifying many of these changes.

Mexico ended Telmex's monopoly on the provision of commercial long-distance telecommunications services on August 10, 1996, and allowed long-distance competitors to interconnect to the public-switched network on January 1, 1997. A number of U.S. firms, in partnership with Mexican firms, are competing for Mexican residential and commercial long-distance subscribers. Mexico allows up to 49 percent foreign investment in telecommunications networks and services, including basic telecommunications. An exception is provided in Mexico's new telecommunications law that allows consideration of a higher limit for foreign investment in cellular services.

Under the WTO Agreement on basic telecommunications services, Mexico made market access and national treatment commitments on all basic telecommunication services. Mexico also adopted the pro-competitive regulatory commitments set forth in the Reference Paper associated with the WTO Agreement. Mexico, however, requires the use of Mexican infrastructure for provision of domestic satellite service until the year 2002 and it continues to restrict foreign ownership of all services (other than cellular) to 49 percent.

The NAFTA eliminated all investment and cross-border service restrictions in enhanced or value-added telecommunications services and private communications networks, most as of January 1, 1994. The remaining restrictions, limited to enhanced packet switching services and videotext, were eliminated on July 1, 1995.

There are several aspects of Mexico's regulation of its telecommunications market that inflate the cost of terminating international traffic in Mexico and exacerbate the long-standing problem of high settlement rates by preventing competitive forces from being brought to bear on these rates. (The settlement rate for U.S.-Mexico international traffic was more than 39 cents per minute in 1997, compared to U.S.-Canada rates of about 7 cents per minute. These high settlement rates resulted in outpayments to Mexico by U.S. carriers of 875 million dollars in 1996, and 750 million in 1997.

The Government of Mexico has given one carrier, Telmex, a de facto monopoly to negotiate settlement rates that prevents other Mexican carriers from negotiating lower rates. On January 1, 1999, Mexico removed a 58 percent surcharge on the settlement rate on inbound international traffic paid to Telmex. The Government of Mexico has stated that it is the internal policy of the Mexican Government not to permit resale, i.e., the reselling of the long distance public network in Mexico. In the absence of this policy, carriers could use "international simple resale," a form of resale using leased lines that are not subject to settlement rates. This policy reinforces Telmex's market dominance and seriously erodes the basis for effective competition in Mexico's telecommunications market. USTR is reviewing these and other aspects of Mexico's regulatory regime under section 1377 of the Omnibus Trade and Competitiveness Act of 1988. In the 1997 section 1377 review, USTR concluded that Mexico had satisfactorily established standards for terminal attachment equipment. In particular, U.S.-affiliated carriers remain dissatisfied by regulation of Mexico’s domestic telecommunications market to prevent anti-competitive behavior and to assure fair interconnection. The Mexican Government still has not indicated when it will implement regulations to enable resale of domestic services. Licensing arrangements for earth station operators using U.S.-licensed satellites appear to be unduly cumbersome. We continue to monitor implementation of these standards in the NAFTA Telecommunications Standards Subcommittee.

INVESTMENT BARRIERS

Ownership Reservations

Mexico maintains state monopolies in a variety of sectors, including oil and gas exploration and development and basic petrochemicals, that effectively bar U.S. private investment. In addition, U.S. investment in border and coastal real estate is available only through bank-run trusts. In May 1995, the Mexican Government passed legislation to privatize the national railroad system. Mexico will allow up to 49 percent foreign control of 50-year concessions to operate portions of the railroad system, renewable for a second 50-year period. The concessions for the Northeast, Southeast and Northern Pacific Railroads as well as concessions for two independent and one concession-linked short line have been awarded. Similarly, an airport law passed in December 1995 provides for renewable 50-year airport operation concessions to private investors. However, foreign ownership is limited to 49 percent in most cases (waivers are available in specific circumstances). The first group (out of five groups) consisting of nine airports was concessioned in December 1998. Two more groups of airports are to be concessioned in 1999.

While Mexico actively seeks and approves foreign investment in natural gas transportation, distribution and storage systems, it continues to exclude U.S. investors from owning assets in other important sectors open to its own citizens, including oil and gasoline distribution and retailing, selected educational services, newspapers, and agricultural land.

Mexico has notified the WTO of measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The measures deal with local content and trade balancing in the automotive industry. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Mexico therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

NEW ZEALAND

In 1998, the U.S. trade surplus with New Zealand was $240 million. U.S. exports to New Zealand were $1.9 billion in 1998, a decrease of $72 million over the previous year. U.S. imports from New Zealand totaled $1.6 billion, up $66 million over the previous year. The stock of U.S. foreign direct investment amounted to $5.2 billion in 1997, representing a slight decrease from 1996. U.S. direct investment in New Zealand is largely concentrated in telecommunications, forestry and paper, food processing, manufacturing, transportation, and petroleum.

Overview

New Zealand is a valued partner in the global effort to reduce Barriers to the free flow of trade and investment, working closely with the United States in the world trade organization (WTO), Asia Pacific Economic Cooperation (APEC) and other multilateral fora. New Zealand's reform process has been largely unilateral, and it maintains an essentially open trade and investment regime. New Zealand is chairing APEC this year.

With the government's deregulation and privatization program in the late 1980's, New Zealand became a growing destination for U.S. foreign direct investment. The New Zealand-U.S. commercial relationship has also expanded rapidly. The government, led by Prime Minister Jenny Shipley, appears committed to continuing New Zealand's economic reforms. In 1998, the government removed tariffs on passenger and light commercial vehicles, except motor homes and ambulances; announced plans to remove all tariffs by 2006, four years before the date required to meet its APEC commitments; and continued to privatize government assets.

IMPORT POLICIES

Tariffs

New Zealand is one of the ten leading export markets for U.S. distilled spirits, with sales totaling more than $9.8 million in 1997. New Zealand has eliminated tariffs on imports of whisky, brandy and rum; but continues to assess tariffs of between 8 and 11 percent *ad valorem* on imports of liqueurs, gin and vodka. These rates are to be reduced to 5 percent *ad valorem* by July 1, 2000. The United States is seeking the elimination of these duties.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Regulations Regarding Genetically Modified Organisms (“GMOs”)

A new regulatory body, the Environmental Risk Management Authority (“ERMA”) has assumed responsibility for assessments of new organisms introduced into New Zealand. GMO review is now compulsory and first applications under the full process of public notification and hearing have occurred. Full release of a GMO has yet to take place in New Zealand.

In addition, a new mandatory standard for foods produced using biotechnology comes into effect May 13, 1999. The standard prohibits the sale of food produced using gene technology, unless the food has been assessed by the Australia New Zealand Food Authority (ANZFA) and listed in the standard. In December

1998, the Australia New Zealand Food Standards Council directed ANZFA to require labeling for virtually all foods produced using biotechnology. Draft labeling regulations will be considered in mid-1999.

USTR will be monitoring both of these programs to determine whether they are being implemented in a manner that constitutes a barrier to trade.

Sanitary and Phytosanitary controls

New Zealand maintains a strict regime of sanitary and phytosanitary control for virtually all imports of agricultural products. Opportunities for greater access to the New Zealand market remain limited for some U.S. agricultural products, while other products are subject to rigid pre-clearance requirements. However, there has been improvement over the past few years in access for some U.S. agricultural products.

Poultry

New Zealand maintains a complete prohibition on all imports of uncooked poultry. In June 1996 the Ministry of Agriculture published a qualitative review which characterized the disease risk of imported poultry as negligible. However, objections from the New Zealand poultry industry have prompted the ministry to carry out a more detailed risk assessment.

Salmon

Uncooked, headless, gilled and gutted salmon is now permitted to enter New Zealand from the United States, Australia, Canada, the European Union, and Norway pursuant to an August 1998 decision by the Government of New Zealand. The risk assessment also allowed for the importation of trout. But regulations barring the sale of trout are being applied to constrain trout imports following pressure from sports fishing interests.

LACK OF INTELLECTUAL PROPERTY RIGHTS PROTECTION

Parallel Imports

On May 16, 1998 the New Zealand Government passed an amendment to the Copyright Act legalizing parallel importing of all copyrighted works. As with Australia, New Zealand's laws do not effectively deter against piracy. U.S. firms have reported no success in bringing criminal cases against pirated works, and New Zealand needs to update its laws to provide better protection. The U.S. Trade Representative initiated an Out-of-Cycle Special 301 review of New Zealand's intellectual property regime on May 26, 1998.

SERVICES BARRIERS

Telecommunications

While prospective entrants into New Zealand's deregulated telecommunications market face no legal restrictions, there has been a history of telecommunications market access complaints. Telecommunications firms have been required to deal directly with the former monopoly provider, Telecom New Zealand, for local access or telephone numbers, with court appeals as the only recourse if agreement cannot be reached. During 1998, Saturn Communications constructed alternate networks to Telecom's in some local markets to provide telephone and cable television services. When Telecom lowered its rates, but only in the areas in which Saturn was competing, Saturn lodged an appeal with the Commerce Commission. However, the Commission refused to constrain Telecom's use of predatory pricing to discourage competition.

Access for Pharmaceuticals

Pharmaceutical Management Agency (PHARMAC)

PHARMAC was established in 1993 as a limited liability company to manage the purchasing or funding of pharmaceuticals for the Health Funding Authority (HFA). The HFA is responsible for purchasing health services and supplies for all New Zealanders. PHARMAC administers the National Pharmaceutical Schedule on HFA's behalf. The Schedule lists medicines subsidized by the government and the reimbursement paid for each pharmaceutical. The schedule also specifies conditions for prescription of a product listed for reimbursement. At its creation, PHARMAC was exempted from New Zealand's normal competition laws, an exemption upheld in a 1997 High Court ruling in an umbrella court case brought against PHARMAC by New Zealand's Researched Medicines Industry (RMI) association. While New Zealand does not *per se* restrict the sale of non-subsidized pharmaceuticals in New Zealand, private medical insurance companies will not cover unsubsidized medicines. Thus, PHARMAC effectively controls what prescription medicines will be sold in New Zealand and, to a large extent, at what price they will be sold.

Pharmaceutical suppliers complain that it is difficult to list new chemical entities and line extensions on PHARMAC's schedule. In general, PHARMAC will not apply a subsidy to a new medicine unless it is offered at a price lower than currently available subsidized medicines in the same therapeutic class or unless the producer is willing to lower its price on another medicine already subsidized in another class. Pharmaceuticals can also be delisted if a competing product is selected to serve the market as the result of a tender or if a cheaper alternative becomes available and the manufacturer of the original product refuses to discount its price to that of the lower-priced alternative. PHARMAC's use of reference pricing, the practice of doing trade-off deals between classes of drugs, and tendering practices can negatively affect a company's revenue return on its intellectual property. The United States and New Zealand governments have begun a dialogue with the aim of alleviating impediments to market access from PHARMAC's practices.

INVESTMENT BARRIERS

Approval by the Overseas Investment Commission (OIC) is required for all foreign direct investment where an "overseas person" is to acquire or take control of "significant" assets in New Zealand. Investment screening diminishes the value of New Zealand’s GATs commitments. “Control" is defined as 25 percent ownership or a controlling interest in an asset. Significant assets include businesses or property worth more than NZD 10 million; land more than five hectares or worth more than NZD 10 million; and certain "sensitive" land more than 0.2 hectares (e.g. on islands, on or next to reserves, historic/heritage areas, foreshores, and lakes). Approval may not be granted to purchase assets for non-productive purposes, e.g. lifestyle property acquisitions.

ANTICOMPETITIVE PRACTICES

State Trading Enterprises

New Zealand maintains several agricultural producer organizations which enjoy statutory protection as monopoly sellers or which license sellers. Export monopolies remain in place for dairy, apples, pears, and kiwifruit. In its May 1998 budget, the GNZ announced its intention to remove the statutory backing of New Zealand's agricultural marketing boards and invited the boards to file plans by November 1998 for operating without statutory powers. Most plans reflected changes already endorsed by industry and included retaining export monopoly privileges.

The government is moving to break up vertically integrated monopolies with the aim of encouraging competition. In the electric utility sector, firms are being required to separate their line business (treated as a natural monopoly under threat of price regulation) from the energy and retail businesses (which is to function as a competitive market) by April 1999. In addition, the Electricity Corporation of New Zealand (ECNZ) is to be split into three state owned enterprises (SOE's), which are to compete with each other and other generators. Some of ECNZ's generation assets and interest in natural gas fields were already transferred in 1996 to contact energy (structured as an SOE). The government has requested indicative bids by mid-February for a 40 percent stake in contact energy, and the remaining 60 percent is expected to be sold in a share market float by May.

ELECTRONIC COMMERCE

New Zealand has no barriers that apply specifically to electronic commerce.

NICARAGUA

In 1998, the U.S. trade deficit with Nicaragua was $117 million, a decrease of $33 million from 1997. U.S. merchandise exports to Nicaragua were $337 million in 1998, an increase of $47 million (16.4 percent) over 1997. Nicaragua was the United States 78th largest export market in 1998. U.S. imports from Nicaragua were $453 million in 1998, an increase of $14 million (3.2 percent) from 1997. The United States is Nicaragua's largest trading partner. The stock of U.S. foreign direct investment in Nicaragua was $130 million in 1997, up 62.5 percent from 1996.

IMPORT POLICIES

Tariffs

Nicaragua's tax reform law of May 1997 made sweeping changes in the system of import taxes, reestablishing a schedule of progressive tariff reductions through the year 2002. The tax reform banned the establishment of almost all the non-trade barriers on imports. It also repealed, effective July 1998, the 1980 "law of agents, representatives and distributors of foreign products." That law made it difficult for foreign firms to terminate local distributors. Importers of many items face a total import tax burden of 15 to 45 percent. Nicaragua imposes regular import duties (DAI) of 15 percent on final consumption goods and 10 percent on intermediate goods (there is no DAI on raw materials and capital goods produced outside Central America, but a 5 percent DAI applies to raw materials and capital goods from any Central American country). The Government of Nicaragua (GON) levies a temporary protective tariff (ATP) of 5 to10 percent on about 900 items. The maximum combined DAI and ATP rate is 25 percent. A luxury tax is levied through the specific consumption tax (IEC) on 609 items, which is generally lower than 15 percent. In addition, most items, except agricultural inputs, are subject to a 15 percent value-added tax (IGV).

There are instances when Nicaraguan Customs has assessed tariffs based on a reference price, which is higher than the actual value of goods as invoiced. This practice - which should be phased out by September 2000 under the Uruguay Round - has had the effect of diminishing the tariff relief intended by the reforms in certain cases.

Members of the Central American Common Market (CACM) are working toward the full implementation of a common external tariff (CET) ranging between 0 and 15 percent for most products. With a few exceptions, there are no regular import duties (DAI) on products traded among CACM members. In its 1997 tax reform law the GON adopted a tariff reduction schedule beyond that called for by CACM agreements. In July 1998, Nicaragua ratified a free-trade agreement with Mexico, which by the year 2000 will remove most regular import duties (DAI) on Nicaraguan exports to Mexico and do the same for Mexican exports to Nicaragua.

Nicaragua's domestic tax and tariff rates are higher on cars with large engines. This has the effect of discriminating against U.S. automobiles, which typically have larger engines than equivalent competitors from other countries. In January 1998, the Nicaraguan Government sent draft legislation to the National Assembly to reduce the tariff differential between cars with large and small engines; however, the legislation languished the entire year in the Assembly.

Agricultural Price Bands

Nicaragua's 1997 tax reform law eliminated the price-band mechanism. Tariffs for products previously subject to the price band (yellow corn, sorghum, rice, and soybeans) now range from 15 to 30 percent and are set to drop to 5 and 10 percent by 2000, or 2001 in the case of rice.

GOVERNMENT PROCUREMENT

The 1981 Law of Administrative Contracting by the State, Decentralized/Autonomous Agencies, and Municipalities sets out clear guidelines for government procurement. However, in practice, many government agencies and state-owned companies engage in direct purchasing outside of the legal framework.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Bilateral Agreement

On January 7, 1998, Nicaragua signed a Bilateral Intellectual Property Rights Agreement with the United States -- the first such agreement in Central America and only the fourth in the hemisphere. The agreement, which had been under negotiation for four years, covers copyrights, patents, trademarks, semiconductor layout designs, encrypted program-carrying satellite signals, trade secrets, and industrial designs. The agreement addresses criminal and civil penalties for infractions and provides a level of protection that exceeds commitments in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The agreement calls for full implementation by mid-1999. At the February 1999 meeting of the U.S.-Nicaragua Trade and Investment Council, the GON presented a schedule for passage of necessary implementing legislation.

Copyrights

Piracy of video recordings, unauthorized video and sound recordings, broadcast theft, and piracy of U.S. satellite signals by the local cable television operators are widespread. The current law, which dates from 1904, does not explicitly protect computer software, which contributes to endemic piracy of these products. A draft copyright law languished in the previous National Assembly but the government pledges to redouble its efforts in 1999. A report prepared by the International Intellectual Property Alliance (IIPA) estimated that losses in Nicaragua due to copyright infringements cost U.S. firms $5.7 million in 1998.

Patents

The current patent law, which dates to 1899, fails to meet international standards for term of protection and for subject matter subject to patentability. Patent protection is limited to short patent terms (10 years). In 1996, the National Assembly ratified the Paris Convention for the Protection of Industrial Property. In April 1997, Nicaragua approved the technical part of the Central American Convention in Industrial Property (inventions and industrial design). However, this is not yet in force, pending approval by other countries. New patent legislation is under consideration, but its prospects for passage are uncertain.

Trademarks

Nicaragua's trademark law currently provides inadequate protection for trademarks, especially well known marks. However, in November 1994, the Central American Convention for the Protection of Industrial Property, of which Nicaragua is a signatory, was revised. The Convention has been signed by the Nicaraguan executive branch, but has not yet been ratified by the National Assembly. The Convention is intended to ensure compatibility with the Paris Convention and Uruguay Round TRIPs provisions.

SERVICES BARRIERS

Nicaragua is overdue in providing to the WTO an acceptance of the Fifth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on financial services into effect.

INVESTMENT BARRIERS

Sandinista-era cases of confiscated U.S. citizen-owned investments or properties continue to create questions about the rule of law and respect for private property in Nicaragua. While the Aleman Administration has made marked progress in increasing the rate of solutions, several valuable properties remain in the hands of the government awaiting fair compensation or return to the rightful owners. There are two cases in which the courts have ruled in favor of U.S. property holders and the Nicaraguan Government has made no compensation to honor the verdict. The government continues to offer only bonds as means of compensation, but has not implemented other forms of restitution, such as the exchange of government-held property or other assets of an equivalent value. The United States will press Nicaragua to devise different forms of compensation.

In order to receive the benefit of the 1991 Foreign Investment Law -- which provides guaranteed repatriation of profits and repatriation of original capital three years after the initial investment -- an interagency foreign investment committee must approve investments. These approvals can be time-consuming and contain criteria -- e.g., approval by the government's environmental agency -- that lack clear definition. Investments may be made without foreign investment committee approval, but such investments do not enjoy repatriation guarantees. The government has announced plans to review the adequacy of the investment law with the objective of removing any bias against foreign investment. The resolution of commercial and investment disputes is unpredictable. The legal system is cumbersome, and the enforcement of judicial rulings is uncertain and sometimes subject to non-judicial considerations.

In July 1995, the Governments of Nicaragua and the United States concluded the U.S.-Nicaragua Bilateral Investment Treaty (BIT) which was designed to improved the investment climate by recognizing intellectual property rights, and by guaranteeing the repatriation of capital and compensation for damages. Nicaragua's National Assembly ratified the BIT in June 1996. The treaty has not yet been submitted to the U.S. Senate for ratification; the U.S. has linked its submission to Nicaraguan progress in resolving U.S. citizen property claims.

ELECTRONIC COMMERCE

There are no known tariff or non-tariff measures, burdensome or discriminatory regulations, or discriminatory taxation affecting electronic commerce.

NIGERIA

In 1998, the U.S. trade deficit with Nigeria was $3.4 billion, an increse in the deficit of $2.2 billion from the previous year. U.S. exports to Nigeria were $820 million in 1998, an increase of $5 million over the previous year. Nigeria was the United States 56th largest export market in 1998. U.S. imports from Nigeria totaled $4.2 billion, a decrease of $2.2 billion from the previous year. The stock of U.S. foreign direct investment amounted to $1.5 billion in 1997. U.S. direct investment in Nigeria is largely concentrated in petroleum.

IMPORT POLICIES

In 1998, the Nigerian Government lifted the ban on agricultural products but replaced it with prohibitive import duties ranging from 100 to 150 percent. The ban on certain agricultural imports, initially implemented to help restore Nigeria's agricultural sector, was compromised by widespread smuggling.

Following a reported shortfall in customs duties, the Nigerian Government in April 1996 implemented extensive port and customs reforms to reduce congestion and corruption. The scheme involved pre-shipment inspection (PSI) and assessment of import duties. An import duty report was mandatory for all shipments. Although customs revenue increased by two-thirds, the government fell far short of its goal of port clearance in 48 hours. Following widespread complaints from importers about the delays, in January 1998, the government announced its intention to eliminate the PSI requirement for imports originating from all African countries and 15 other major trading partners. According to the government's 1998 budget announcement, the United States and other countries not immediately exempted from the PSI requirement would receive similar treatment by 1999. The 1999 Nigerian budget announced the abolition of pre-shipment inspection for all imports and its replacement with destination inspection. The government plans to appoint two new agents (independent contractors) to assist the customs service in carrying out destination inspection.

In the 1999 budget, Nigeria's 1998 revised higher tariffs were reduced, but excise duties eliminated in 1998 were restored for certain goods. Excise duties of 40 percent were restored for cigarettes, cigars, tobacco, and spirits. Other commodity duty rates are: rice, 50 percent; day-old chicks and parent stock, 5 percent; sparkling wines, wine coolers, and champagne, 100 percent; fruits and fruit juices, reduced from 75 to 55 percent; jute, 10 percent; cotton, 60 percent; fertilizers, 5 percent; textile fabrics, 65 percent; and garments, 75 percent. For 1999, the 25 percent import duty rebate granted importers in late 1997 was abolished. Poultry and eggs, beer and stout, barley and malt, and mineral and similar waters, removed from the prohibited imports list in 1998, never qualified for the rebate. However, duty rates for live, chilled or frozen poultry and eggs were slashed from 150 to 55 percent to reduce smuggling for these products and the consequent loss of significant duty revenue.

The Nigerian Inter-Ministerial Committee on Trade Restrictions and the Technical Committee on Tariff Review planned a three-year phased removal of the remaining import prohibition list to end in 1999. Thus, the ban on the following items under the import prohibition list has been removed in the 1999 budget and the following duties apply: plastic materials excluding baby feeding bottles, 30 percent; vegetable oils, 40 percent; cooking oils, 35 percent; margarine, 40 percent; and industrial oils, 20 percent.

GOVERNMENT PROCUREMENT

Nigeria, though a member of the World Trade Organization (WTO), generally does not use an open-tender system for awarding government contracts. Competition for government contracts continues to be complicated by corruption and lack of transparency in decision-making.

EXPORT SUBSIDIES

For more than 20 years, the government has operated the Nigerian Export Promotion Council (NEPC) to encourage development of non-oil exports. NEPC administers various incentive programs, including a duty-drawback program, an export development fund, an export expansion grant fund, a duty suspension scheme, a manufacture-in-bond program, and a pioneer status scheme. The government reports that the duty-draw back and export expansion grant schemes have been the most widely utilized incentives, although each program distributed less than $1 million in subsidies annually. These schemes are largely ineffective owing to inefficient administration. Shortening the application process for subsidy consideration from 38 to 18 steps was one of the promised reforms for 1998, but the reforms have thus far been ineffective. In the 1999 budget, the government announced that the incentive schemes will be replaced by a non-cash incentive scheme termed “negotiable duty credit certificate” (NDCS), under which exporters' claims are credited against future imports. This measure will save the government from making annual budgetary allocations to the scheme and is in conformity with the WTO
.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Nigeria is considered to be Africa's largest market for pirated products. Losses from inadequate intellectual property rights (IPR) protection, though difficult to estimate, are substantial.

As a member of the World Intellectual Property Organization (WIPO) and a signatory to the Universal Copyright Convention (UCC), the Berne Convention, and the Paris convention (Lisbon Text), Nigeria is a party to most of the major international agreements on IPR. Cases involving copyright infringement of non-Nigerian materials have been successfully prosecuted in Nigeria. In 1997, there were sporadic reports of raids in Lagos on video stores renting pirated tapes. However, enforcement of existing laws remains weak, particularly in the patent and trademark areas. Despite active participation in international conventions and apparent interest in IPR issues, government efforts have been ineffectual in curtailing the widespread production and sale of pirated tapes, videos, computer software, and books in Nigeria.

The Patents and Design Decree of 1970 governs registration of patents. The Nigerian Standards Organization is responsible for issuing patents, trademarks, and copyrights. Once conferred, a patent gives the patentee the exclusive right to make, import, sell, or use a product or to apply a patented process. The Trademarks Act of 1965 governs the registration of trademarks. Registering a trademark gives its holder the exclusive right to use the registered mark for a specific product or class of products.

Nigeria's television market, once reserved for official channels, was deregulated four years ago, resulting in the formation of eight private stations, and more than 20 satellite redistribution companies. Similarly, radio stations have expanded from wholly government-owned stations to include three private stations in the Lagos area. Statutes which govern IPR in Nigeria include the Copyright Act of 1988 (amended in 1992); the

National Film and Video Censors Board Act of 1993 (which reinforces the measures of the Copyright Act); and the Nigerian Film Policy Law of 1993 (which encourages the development of the Nigerian film industry).

IPR problems in Nigeria increased with the government's 1981 nationalization of the film industry (including distribution), although this policy has been officially abandoned. Motion Picture Association (MPA) member companies were not paid the contractual compensation that was promised by the government. Moreover, the companies were unable to repatriate their assets from Nigeria. As a result, there has been no trade in recent years between MPA member companies and Nigeria. The estimated accumulated losses to MPA member companies exceed $25 million.

Nigerian companies, including film makers, formed the Proteus entertainment agency to protect copyright laws in the music, video, and other industries. The Copyright Decree of 1988, based on WIPO standards and U.S. copyright law, currently makes counterfeiting, exporting, importing, reproducing, exhibiting, performing, or selling any work without the permission of the copyright owner a criminal offense. Progress in enforcing the 1988 law has been slow. The expense and time necessary to pursue a copyright infringement case to its conclusion deter prosecution of such cases.

Attorneys active in IPR issues have formed the Industrial Property Law Interest Group (IPLIG) to educate and lobby on behalf of industrial IPR issues. They have sponsored several copyright conferences throughout Nigeria and credit themselves for including an IPR course at the Lagos Law School.

In the past, few companies have secured trademark or patent protection in Nigeria because it was generally considered ineffective. Most of the sound recordings and videotapes sold in Nigeria are pirated. Satellite signal piracy is also common. The manufacture and sale of pharmaceuticals and auto parts are emerging problems.

SERVICES BARRIERS

Nigeria is overdue in providing to the World Trade Organization an acceptance of the Fifth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on financial services into effect..

INVESTMENT BARRIERS

Nigeria, Africa's most populous nation with more than 100 million people, offers investors a low-cost labor pool, abundant natural resources, and a large domestic market. However, Nigeria suffers from an inadequate and poorly maintained infrastructure, confusing and inconsistent regulations, endemic corruption, and a lack of confidence in the rule of law. Therefore, a considerable amount of time, money, and managerial effort must be expended by investors before they can begin operations, let alone earn a profit.

In 1997, Nigeria continued liberalizing the foreign exchange mechanism instituted in 1995. Under the foreign exchange decree of 1995, the Autonomous Foreign Exchange Market (AFEM) was reestablished, allowing private companies to source foreign exchange at the parallel market rate (86 Naira to the dollar in January 1999). The central bank intervenes weekly in the AFEM. In the 1999 budget, the government abolished the dual exchange rates; AFEM now prevails for all business transactions. Companies can now hold domiciliary accounts in private banks, with account holders having unfettered use of the funds. Foreign investors may bring capital into the country to service foreign loans, and remit dividends without prior Finance Ministry approval.

Nigeria has notified the WTO that it maintains certain measures that are inconsistent with the WTO Agreement on Trade-Related Investment Measures (TRIMs). Most of these measures relate to local content requirements. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period upon accession to the WTO. Nigeria, therefore, must eliminate these measures before January 1, 2000.

In 1995, Nigeria promulgated the Nigerian Investment Promotion Commission (NIPC) decree which liberalized the foreign investment regime, allowing 100 percent foreign ownership of non-oil producing firms. A foreign enterprise may now buy shares of any Nigerian firm except those on the "negative list" (Firms producing firearms, ammunition, narcotics, and military and paramilitary apparel). The decree also abolished the expatriate quota system (except in the oil sector) and prohibited any nationalization or expropriation of a foreign enterprise by the Nigerian Government except for such cases determined to be in the national interest.

Nigeria's implementation of the 1995 decree designed to inhibit money laundering has been sporadic and largely ineffective. Another decree combating advance-fee fraud, known as 419 fraud (named after the section of the Nigerian criminal code with which it deals), has produced limited progress. The scope of 419 business fraud has brought international notoriety to Nigeria and is a major deterrent to foreign investment in Nigeria.

It is estimated that U.S. business and citizens lose an estimated $1 billion per year to fraud, scams, and corruption of various kinds in Nigeria. Nigeria is considered one of the most corrupt countries in the world by international watchdog groups.

Establishment of a Nigerian Export Processing Zone Authority (NEPZA) in 1992 was an additional effort to attract foreign investment. The first and only zone to date is located in eastern Nigeria in the port city of Calabar. After five years and $50 million in investment, the zone is still essentially non-operational. Although the government reports that 16 firms have provisional authority to operate there, only six firms have begun test production runs, and no exports have been generated.

OTHER BARRIERS

Parastatals

The 1998 budget promised the imminent partial privatization of the telecommunications sector. The government was to retain 40 percent equity in the telecommunications parastatal (NITEL), reserve 20 percent equity for Nigerian citizens and offer the remaining 40 percent for unrestricted sale. Invitations to invest were to be made to specific investors with relevant expertise. The 1998 budget also targeted the reorganization of the electricity generating parastatal (NEPA) in 1999. In 1998, the government repealed and amended eleven decrees that inhibited competition or conferred monopoly powers on public enterprises in the petroleum, telecommunications, power and mineral sectors. Several private telecommunications companies began operating successfully in 1998. The government's commitment to privatize 18 parastatals, including NITEL and NEPA, with the above equity formula, was reaffirmed in the 1999 budget. Additional details on guidelines and timeliness have not been provided.

NORWAY

In 1998, the U.S. trade deficit with Norway was $1.2 billion, a decrease in the deficit of $851 million from the previous year. U.S. exports to Norway were $1.7 billion in 1998, virtually unchanged from 1997. Norway was the United States' 47th largest export market in 1998. U.S. imports from Norway totaled $2.9 billion in 1998, representing a decrease of $862 million from the level of imports in 1997. The fall in the level of imports is largely due to lower oil prices. The stock of U.S. foreign direct investment in Norway in 1997 was $6.3 billion, an increase of 8.2 percent from 1996. Such investment is concentrated largely in the petroleum, manufacturing, and wholesale sectors.

Overview

Norway is a member of the European economic area (EEA) which consists of the EU member countries together with Norway, Iceland, and Liechtenstein. Inside the EEA but outside the EU, Norway has assumed most of the rights and obligations of the EU but has limited ability to influence EU decisions.

While Norway has its own tariff system, U.S. exports face most of the same trade and investment barriers which limit U.S. access to the EU. Preferential tariff rates are granted to the EU and other EEA members. The most significant EEA non-tariff barriers affecting U.S. commercial interests in Norway concern labeling and the acceptance of biotech agricultural goods primarily related to genetically modified organisms and growth hormones.

The Norwegian government has completed much of the transition required under EEA obligations to comply with EU directives. However, adaptation is a constant process as new EU directives are required to be implemented in Norway by virtue of the EEA. The current minority coalition government, which assumed power in October 1997, has faced controversy with regard to some newer EU directives, but most directives are being adopted by the parliamentary opposition.

IMPORT POLICIES

Agricultural Tariffs

In July 1995, Norway accelerated its WTO implementation commitments for tariff reduction on agricultural commodities by immediately adopting the year 2000 bound tariff rate targets. Tariffication of agricultural non-tariff barriers under the Uruguay round has led to the replacement of quotas with higher product tariffs. Domestic agricultural shortages and price surges have been countered by temporary tariff reductions. Lack of predictability of tariff adjustments and insufficient advance notification (Generally only two to five days prior to implementation) have made imports from the united states of fruit, vegetables, and other perishable horticultural products substantially more difficult than under the previously existing import regime and favor nearby European suppliers.

STANDARDS, TESTING, LABLEING AND CERTIFICATION

Agricultural Product Standards

The Norwegian government follows the EU policy of banning the import of growth hormone-treated meat, including growth hormones approved in the united states for beef. In practice, the ban had minimal impact on U.S. beef imports into Norway since meat distributors had previously refused to buy hormone-treated beef based on concern that Norwegian consumers would reject it.

The government passed a law in October 1997 requiring the labeling of all products which contain a minimum of two percent material derived from a gene modified organism (GMO) source. The law requires labeling regardless of whether the gm trait is carried into the processed product. Some products appeared on the market in 1998 without the required labels.

There is strong opposition to GMO food products among Norwegian consumer organizations and retail groups, with the focus currently on GMO soy beans and derivative products. While the government has thus far refrained From banning such gm-commodity imports, market prospects are very limited if alternative non-GMO commodities products are available. The refusal of Norwegian food processors to buy soybeans which are not certified as "GMO-free" has resulted in U.S. soybean sales declining from a traditional level of about 250,000 tons annually until 1995 (before the appearance of GMO soybeans in the U.S. crop) to none in 1997. On the processed foods side, the Norwegian consumers' council, in cooperation with the large retail food chains has threatened periodically to boycott gm products.

Under the authority of Norway's 1993 gene technology act, the government may ban the import of GMO products based on a number of criteria. In addition to rejecting products on health and environmental risks (e.g., risk of development of antibiotic resistance), the government can also ban such products which are not "socially justifiable" and do not contribute to "sustainable development." These criteria apply regardless of the scientific merits of the product, including safety and effectiveness. The government has used the act selectively and applies a "precautionary policy," in which GMO products are generally banned if non-GMO alternatives are available. In practice, this has resulted in banning some GMO imports while granting exemptions for some locally produced GMO products.

In the pharmaceutical sector, for example, the government banned the import of certain products such as GMO rabies vaccines on the basis that the disease was not endemic to Norway and non-gm alternative pharmaceuticals were available. On the other hand, the government has granted local pharmaceutical manufacturers exemptions to produce GMO pharmaceuticals for the domestic and export markets.

The impact on U.S. exports of the government's selective banning of processed gm products is unclear and so far is limited to niche markets.

The market for U.S. processed foods is impeded significantly in Norway due to the Norwegian food authorities' restrictive practices concerning the import of processed foods which contain enrichment additives. While limited exceptions are granted on a case-by-case basis, the authority generally bans or restricts the distribution of foods which contain additives not essential to the product, regardless of whether the additives are beneficial. Examples include bakery mixes with enriched flour and cereals with vitamin additives.

An additional barrier for the U.S. processed food market is the requirement that importers complete a detailed agricultural raw materials declaration. Manufacturers have declined to provide the information out of concern that is would require releasing proprietary information.

Application of Safety Certification Standards

In 1996, the Norwegian Maritime Directorate (NMD) instructed the Norwegian maritime community to discontinue use of emergency survival suits produced by a leading U.S. manufacturer and approved by the U.S. coast guard. The NMD's action was based on Norway's interpretation of the international maritime organization's (IMO's) certification and testing guidelines. The NMD and the U.S. manufacturer resolved this issue in 1998.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Under its EEA obligations, Norway must allow parallel imports from EEA countries but may permit or ban parallel imports on a selective basis from elsewhere. Parallel imports of cd recordings from non-EEA countries are banned under a 1993 law. A proposal to repeal this ban failed in 1998.

INVESTMENT BARRIERS

Norway has actively participated in the negotiations on the organization for economic cooperation and development (OECD) multilateral agreement on investment. In 1995, in accordance with EEA national treatment directives, the Norwegian government changed the rules governing foreign investment in industrial companies. Under the new system, foreign investors no longer need To obtain a government concession before buying limited shares of large Norwegian corporations. However, both foreign and Norwegian investors are still required to notify the government when their ownership in a large company (meeting certain size criteria) exceeds specific threshold levels of 33 percent, 50 percent and 67 percent. The Norwegian government then can take action if the purchase is considered contrary to national interests, which could include objectives such as maintaining high employment and providing some market protection to existing business against new market entrants.

There are no formal, standardized performance requirements imposed on foreign investors. In the offshore petroleum sector, Norwegian authorities encourage the use of Norwegian goods and services. The Norwegian share of the total supply of goods and services to the offshore petroleum sector has been about 50 to 60 percent over the last decade.

In the past, the Norwegian government has shown a strong preference to the three Norwegian oil companies in awarding the most promising oil and gas blocks. In 1995, however, the government implemented an EU directive requiring equal treatment of EEA oil and gas companies. American oil companies competing in the 15 concession round (completed in 1996) agree generally that they were treated on an equal basis with the Norwegian companies.

Financial Sector

In December 1997, the government agreed to all elements of the WTO financial services agreement (the fifth protocol to the gats) with the exception of limiting the establishment of cross-border insurance operations to companies authorized specifically to operate in Norway. No additional implementation measures were required since the government's earlier implementation of the Second protocol to the gats, the EEA accords and the EU's second banking directive removed many financial sector barriers for EU and efta member countries. Recent deregulation of financial markets appears to have eliminated nearly all of the barriers facing U.S. financial institutions seeking to operate in Norway.

Without an exemption from the ministry of finance due to special circumstances, no single or coordinated group of investors, Norwegian or foreign, may purchase more than ten percent of the equity of an insurance company, commercial bank or savings bank. In order for one or more foreign banks to establish a new Norwegian bank, one of the foreign banking partners must own more than 50 percent of the equity in the new bank. Without an exemption from the ministry of trade and industry, half of the members of the board and half the members of the corporate assembly of a financial institution must be permanent residents of Norway or citizens of a state within the European economic area, when residing in such a state.

Lack of government/authority action against anti-competitive practices of state-owned and private firms that restrict the sale of U.S. products and services

For most sales of pharmaceuticals to hospitals, companies are required to sell to a purchasing organization (the "lis") which is tantamount to a monopsony as the lis buys on behalf of approximately 80 percent of the hospitals in Norway. This structure has a negative impact on the ability of all pharmaceutical companies, including American firms, to sell in a competitive market. The Norwegian association of pharmaceutical manufacturers (which includes American firms) has also complained about Norway's implementation of an EU directive on transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems. Legal actions challenging both of these practices have been filed with the efta surveillance authority in brussels.

OTHER BARRIERS

Telecommunications equipment

On January 1, 1998, Norway fully liberalized its telecom services market to comply with its WTO commitments. This ended the effective monopoly of Telenor (the state-owned telecom company) on fixed line voice services, infrastructure, and telex services. Equipment which has not been tested and certified under The European economic area's common technical regulations must be type approved by the Norwegian telecommunications authority. The Norwegian government has indicated that under normal procedures this takes about six weeks. In the past, American companies have reported that this type approval is slow and costly for companies offering new products. Norwegian authorities Met with U.S. officials in Washington in 1998 to recommend negotiating mutual recognition agreements similar to those negotiated between the united states and the EU on a number of regulated products.

PAKISTAN

In 1998, the U.S. trade deficit with Pakistan was $965 million, an increase in the deficit of $757 million from the previous year. U.S. exports to Pakistan were $726 billion in 1998, a decrease in exports $508 million (41.1 percent) from 1997. Pakistan was the United States' 60th largest export market in 1998. U.S. imports from Pakistan totaled $1.7 billion in 1998, representing a decrease of $249 million (17.3 percent)from the level of imports in 1997. The stock of U.S. foreign direct investment in Pakistan in 1997 was $630 million, an increase of 35.5 percent from 1996.

Overview

In terms of announced policy, the administration of Prime Minister Nawaz Sharif has embraced further the direction of and selectively accelerated the pace of Pakistan's policy change toward World Trade Organization (WTO) standards. Nevertheless, many of Pakistan's trade practices have not been brought into conformity with announced policy. Lags, disparity, and inconsistency long have characterized Pakistan's implementation of trade policy reform. The traditional flux and disarray in policy implementation exacerbated during 1998 when the Asian financial crisis and the pressure of nuclear-related economic sanctions presented the Pakstani Government with a severe foreign exchange and international payments crisis. However, in late 1998 and early 1999, the Pakistani Government was working successfully through a new financial assistance package with the international financial institutions. The new assistance package offered the promised of balance of payments support and debt rescheduling and created a new opportunity for the Government of Pakistan to return to serious structural reform, including trade reform. Under the various IFI programs, the Pakistani Government has contracted to further liberalize its trade regime.

IMPORT POLICIES

In compliance with the IMF/World Bank policy framework paper of December 1998, the Pakistani Government "fully committed" to further liberalizing its trade regime. The Pakistani Government committed to reduce its maximum import tariff from 45 percent to 35 percent and reduce the number of non-zero rates from five to four by end-March 1999. The Pakistani Government also committed conditionally further to reduce the maximum import tariff to 25 to 35 percent by June 2000. The remaining export bans, export duties, and export minimum price and quota restrictions are to be withdrawn by July 1999. Further procedural restrictions on imports also are to be eliminated by July 1999.

Current Pakistani Government macro economic policy stresses export led growth through emphasis on higher value added to items and elimination of residual "anti-export" bias. Recent incentives include reducing the cost of export financing and lowering duty on imported raw material incorporated into export products, especially engineering products and non-traditional exports. The Pakistani Government shares the cost with exporters of some ISO certification programs.

Certain detrimental import restrictions, mostly questionable fees, continued into early 1998, including for soda ash (estimated U.S. export loss $25-50 million). For pharmaceutical packaging and raw materials preferential tariff rates are usually granted only if the goods in question are not manufactured locally. For example, the drug Paracetamol is manufactured in Pakistan but the local product does not meet the user's specification. Nevertheless, the imported raw material attracts a 45 percent duty as well as 12.5 percent sales tax. For other pharmaceutical raw materials or products which are not manufactured locally, the duty is 10 percent and there is no sales tax. U.S. industries have expressed particular concern with the Government of Pakistan's discriminatory application of the internal sales tax between imported pharmaceutical raw materials (taxed at 12.5 percent) and the same domestically produced raw materials (exempt from taxation). Moreover, industry believes that Pakistan's imposition of price controls on pharmaceutical end products further impedes U.S. pharmaceutical manufacturers from maintaining profitability on sales of pharmaceutical end-products. Industry has estimated that removals of these barriers would result in increased sales of U.S. pharmaceutical companies' products of $50-100 million.

With the past year Pakistan has replaced the previous preshipment inspection regime run by Swiss firms with an import trade price system run by Pakistan customs agency. However, this change has not eliminated complaints. In numerous disputes importers assert that import trade prices are set arbitrarily by customs.

The Pakistani tariff regime is generally characterized by complexity, broad bureaucratic discretionary powers, and very limited transparency. Administrative decisions frequently grant exemptions and concessions from general rules under the system of Special Regulatory Orders (SRO) that amount to temporary duty suspension decrees. As a result, different rates are applied to the same product and average applied rates are sometimes lower than statutory duties. The IFI reform programs address these problems and the U.S. Embassy believes simplifying the tariff regime will benefit U.S. exporters. Other U.S. exports that continue to face market access restrictions include instant print film and instant print cameras. In addition to the range of border and internal market restrictive barriers in Pakistan on the industry's products, U.S. film and entertainment industry representatives have estimated an annual loss due to the entertainment taxes of approximately $1 million.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Pakistan's barriers to trade often are expressed as extra fees. Less frequently, usually in the context of protecting some domestically manufactured product, the U.S. exporter will encounter difficulty with "Quality" standards.

GOVERNMENT PROCUREMENT

The Pakistani Government, along with its numerous state-run corporations, is Pakistan's largest importer. Work performed for government agencies, including purchase of imported equipment and services, often is awarded through tenders that are publicly announced or issued to registered suppliers. The Pakistani Government nominally subscribes to principles of international competitive bidding, but political influence on procurement decisions is common, and these decisions are not always made on the basis of price and technical quality alone. Charges of official corruption and long delays in bureaucratic decision-making are common. The sanctity of contracts also has been an issue for some companies dealing with the government. The U.S.industry estimates that if these barriers were eliminated, U.S. exports would increase by $10-25 million.

EXPORT SUBSIDIES

Pakistan actively promotes the export of Pakistani goods with measures such as government financing and tariff concessions on imported inputs, and income and sales tax concessions. Pakistan has established export processing zones with benefits including tax holidays, indefinite carry forward of losses, exemption of imports from taxes and duties, and exemption from labor laws and various other regulatory regimes.

LACK OF INTELLECTUAL PROPERTY PROTECTION

The United States has taken various steps to ensure that Pakistan complies with its TRIPs commitment to fulfill its obligation to establish a "Mailbox" and associated exclusive marketing rights for agricultural chemical and pharmaceutical product patent applications. After repeated bilateral consultations and a U.S. request for establishment of a WTO Dispute Settlement Panel, the Pakistani Government issued an Executive Ordinance on February 4, 1997, establishing a mailbox system and granting exclusive marketing rights to patent applicants under certain conditions. U.S. and Pakistani officials notified the WTO on February 28, 1997 that this matter had been settled based on a common understanding of the appropriate implementing regulation necessary for Pakistan to meet its TRIPs obligation.

The laws in Pakistan generally provide for protection of intellectual property rights. Nevertheless, intellectual property piracy in Pakistan continues. Upper level government officials are aware of the negative impact of Intellectual Property Rights violations on Pakistan's investment climate. The government has undertaken the task of rewriting legislation in the areas of copyrights, patents, and trademarks. Separate committees have been formed in each area under the leadership of the ministries of education, industries, and commerce respectively. This work has been hampered by lack of a central coordinating authority. Authorities have taken some steps to strengthen enforcement, including raids on pirated-video rental shops. The government has pledged to continue such efforts. However, the fines applied to violators have been too small to provide a credible deterrent. In addition, continuing civil unrest in major commercial centers has hampered enforcement efforts in general.

The U.S.-Pakistan Treaty of Friendship, Commerce and Navigation guarantees national and Most-Favored-Nation (MFN) treatment for patents, trademarks, and industrial property rights. Pakistan is a member of the Berne Convention, the Universal Copyright Convention , and the World Intellectual Property Organization, but not a member of the Paris convention for the Protection of Industrial Property.

Patents

Recently, law protected only process patents for a duration of sixteen years, although the government is committed to eventually offering product patents in accordance with its WTO obligations. U.S. Industry has complained that the right of the patentee is not adequately protected by law, permitting infringers to continue freely manufacturing illegal products. In addition, recently only the patent-owner, not licensees, could file a suit against an infringer. There also is always the threat of revocation of the patent or compulsory licensing. Further, backlogged cases in the courts result in the delay of justice. As a result, injunction orders against the infringer cannot be issued expeditiously. U.S. industry reports that piracy continues to inflict losses on the research-based pharmaceutical industry at an estimated cost of $15-20 million per year.

Trademarks

There have been occasional instances of trademark infringement, involving a range of products such as toys, playing cards, and industrial machinery. In August 1994, the Pakistani Government issued new drug labeling rules requiring the generic names of substances to be printed with at least equal prominence as that of the brand name. This rule serves to dilute in the minds of consumers existing difference in quality, efficacy, and safety, and incorrectly implies total interchangeability and equality among different products. The U.S. industry estimates a loss of $5-10 million in U.S. exports for patent and trademark violations.

Copyrights

Violations of intellectual property rights in Pakistan are most common in the area of copyrights, where the piracy levels are exceptionally high. Th market for imported computer software has remained nearly 100 percent pirated, while U.S. industry has estimated that the piracy rate for videos has declined to around 80 percent. As a result of strengthened law enforcement some video outlets are taking steps to offer legitimate products. U.S. industry has reported some improvement in Pakistan's anti-piracy program. For example, during the first half of 1998, 312 retail video outlet raids were conducted nationwide. Special police anti-piracy task forces have also been established in the different parts of the country. Nevertheless, U.S. industry continues to express concern over the high rate of video piracy in the form of back-to-back copying of videos in video outlets. Furthermore, the entertainment industry reports that motion picture infringement cases slowly move through the court system due to the backlogged court system. Piracy of copyrighted textile designs and reprint piracy of books (especially computer books, business titles, and medical texts) continue to be significant problems. Export of counterfeit products made in Pakistan have been reported.

Despite improvements in enforcement, the courts have been lax regarding successful prosecution of copyright infringement. According to industry representatives, penalties for infringement imposed by the courts are not strict enough to provide an effective deterrent to piracy. For example, typical penalties imposed on pirate video outlets have amounted to fines of only $16 and no imprisonment. Further, the courts remain extremely backlogged stemming from inefficient procedures. In the area of copyright infringement alone, in Pakistan, the International Intellectual Property Alliance estimated that piracy of films, sound recordings, computer programs, and books resulted in trade losses of $80 million in 1998.

SERVICES BARRIERS

The new investment policy announced in November 1997 promised liberalization, including in services. Additionally, Pakistan improved its offer in the context of WTO financial service negotiations in December 1997. These commitments promise some liberalization by granting the right of establishment for banks, as well as grandfathering acquired rights of foreign banks and foreign securities firms.

Previously, several sectors, including banking, insurance, transportation, telecommunications, and entertainment have been affected by services barriers. Portions of major service industries are nationalized and run by the government.

Foreign banks generally have been restricted to few branches, faced higher withholding taxes than domestic banks, and experienced restrictions on doing business with state-owned corporations. Foreign brokers may join one of the country's three stock exchanges only as a part of a joint venture with a Pakistani firm. A person is not permitted to serve as a foreign legal consultant on international law or third country law without being licensed to practice law in Pakistan.

New foreign entrants to the general insurance market virtually have been barred. Foreign firms wishing to compete in the life insurance market, while not barred, also faced severe obstacles. Those few foreign insurance companies operating in Pakistan faced various tax problems, long delays in remitting profits, and problems associated with operating within the insurance cartel.

Basic telephony remains the monopoly of the majority state-owned Pakistan Telecommunications Corporation, but competition among private providers is now allowed in cellular telephony.

In WTO negotiations on basic telecommunications services, Pakistan made commitments on basic telecom services, with phase-in on some obligations. For instance, Pakistan is to provide national treatment for voice services, private leased circuit services, and telegraph services by 2004. Pakistan also agreed to permit foreign ownership or control of all telecommunications services and facilities by 2004. As part of the agreement, Pakistan also adopted certain pro-competitive regulatory principles but took an MFN exemption on accounting rates.

Services barriers in the form of admission price controls by provincial governments remain a matter of concern for U.S. film and entertainment industries. Admission price controls coupled with high entertainment taxes have made it very difficult for theaters to be profitable; theater owners lack the authority to set admission prices according to market conditions. U.S. industry sources report that provincial governments have made no attempts to alleviate these controls in 1998.

If all service barriers were eliminated, the U.S. industry representatives estimates an increase in U.S. exports of $25-100 million.

INVESTMENT BARRIERS

As mentioned above, the new investment policy of November 1997 promised liberalization of the climate for foreign direct investment. It is not yet clear exactly how the announced policy will be implemented. Local content requirements can occur in the automobile, electronics, electrical products, and engineering industries under Pakistan's "Deletion Program." The program is ostensibly not compulsory. However, at least one telecom equipment producer has reported that telecom licensees must adhere to the import deletion program. Investors who "voluntarily" undertake to increase the local content of their output enjoy lower tariffs on imported inputs but are subject of fines for non-compliance with an agreed-upon import deletion schedule. In the auto sector, U.S. Industry reports that the Pakistani Government expects new motor vehicle assembly plants to achieve a local content level of at least 40 percent within five years of starting production. U.S. Industry reports further that 40 percent local content level is a firm requirement after seven years of starting production of motor vehicles in Pakistan. Local content requirements such as these will have to be phased out before January 1, 2000, in order for Pakistan to comply with the WTO Agreement on Trade Related Investment Measures (TRIMs).

Investors often face unstable policy conditions, particularly on large infrastructure projects. For example, GOP's consistent harassment of and refusal to recognize its contractual commitments to the independent power producers has severely damaged Pakistan's climate for foreign investments. Changes in governments can significantly alter the conditions and assumptions under which an investment agreement was signed or is being pursued. Also, security concerns can be disruptive factors influencing company choice of location of facilities and areas of operation. Security concerns can result in changes of plan to accommodate shifting patterns of instability.

ELECTRONIC COMMERCE

At early 1999, the U.S. Embassy has received no complaints from U.S. industry regarding local restrictions affecting electronic commerce.

OTHER BARRIERS

Lack of transparency is a recurrent and substantial problem in many areas, including government procurement and customs valuation. Two Federal Government bodies take an interest in this problem, in addition to various government departments that might investigate allegations of corruption under their purview. The Monopolies Control Authority is credited with being reasonably effective at combatting the practices covered by the law it is charged with enforcing, although the law is narrow in scope. The Federal Anti-Corruption Commission is considered politicized, and therefore a less effective body.

Regulations governing product registration also act as a barrier to U.S. goods. U.S. industry has expressed concerns in particular to the Pakistan government's unilateral adoption of a discriminatory policy against transnational pharmaceutical companies by insisting that they can only register products that are on sale in the country of incorporation of the respective company. Local companies, however, are not held to such a standard, as they can register products from any source. This results in a policy that discriminates against the research-based companies operating in Pakistan. In addition, the time required for the registration process for many multinational pharmaceutical companies in Pakistan is often 2 years, if not longer. Further, industry has also expressed concern with Pakistan's drug labeling rules, noting that these laws appear to place Pakistan in violation of the WTO TRIPs rules protecting trademarks.

PANAMA

In 1998, the U.S. trade surplus with Panama was $1.4 billion, an increase of $270 million from the 1997 surplus of $1.2 billion. U.S. merchandise exports to Panama were $1.8 billion, an increase of $215 million (14 percent) over 1997. Panama was the United States' 46th largest export market in 1998. U.S. merchandise imports from Panama were $313 million in 1998, a decrease of $54 million (15 percent) from 1997. The most recent available statistics (1997) indicate the stock of U.S. foreign direct investment (FDI) in Panama was $21.0 billion. Most U.S. FDI in Panama is in the financial, maritime, petroleum, telecommunications, energy, and wholesale sectors.

IMPORT POLICIES

Panama joined the World Trade Organization (WTO) in 1997, after implementing laws liberalizing several aspects of the country's trading regime (primarily tariff reductions, import licensing and phytosanitary standards). In 1997 tariff rates were lowered on selected food products and construction materials to a uniform 10 percent and rates on all remaining products except rice, milk products and autos to 15 percent or below. This two-phase tariff reduction resulted in an unweighted average tariff rate of 8.25 percent. Rice and milk products are still protected with tariff rates of 50 percent and 40 percent respectively. If tariffs were to fall to the 15 percent ceiling, the impact on the Panamanian rice and milk products markets would be substantial, although trade would likely increase less than $10 million due to the small market. In May 1998, Panama enacted safeguard measures for sugar, raising tariff rates to 50 percent.

Panama is not a member of the Central American Common Market or any other subregional economic group. It continues free trade negotiations with Chile and Mexico.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Panama's standards and certification regime generally conforms to WTO standards. However, phytosanitary restrictions have been applied from time to time in response to sectoral unease with Panama's trade opening. Although some U.S. rice imports were delayed in the past when Panamanian growers claimed contamination by the T. Barclayana fungus, imports were eventually allowed to proceed when Panamanian authorities addressed underlying sectoral concerns. The fungus is considered harmless and is already present in Panama.

In 1998, firms importing U.S. pork products had trouble obtaining import permits from the Ministry of Agriculture, in violation of Panama's WTO commitments. In addition, Panama enacted a WTO-inconsistent 15-day waiting period for import permits for fruits and vegetables.   Panama requires certification by Government of Panama (GOP) officials of U.S. processing plants as a condition for the imports of poultry, pork and beef products. U.S. exporters have assisted GOP officials in making inspection visits to U.S. plants. While there is no instance of a U.S. plant failing to be certified, the U.S. is seeking Panama's acceptance of USG certification of packing plants on a reciprocal basis. While importers of non-agricultural products must register them before distribution or sale in Panama, procedures for registration are straightforward and evenly applied.

GOVERNMENT PROCUREMENT

Panama's government procurement regime (Law 56) provides for a transparent bidding process and is managed by the newly formed Ministry of Economy and Finance. (The Ministry of Policy and Economic Planning merged with the Ministry of Treasury and Finance in January 1999.)   However, one prominent case in 1996 raised doubts about transparency when Hutchison International Terminals won the concession to operate ports at both ends of the Panama Canal. The bidding procedure was criticized as being unorthodox and lacking transparency; U.S. firms appeared to be disadvantaged. In contrast, later bids for the state telecommunications company and power generation and distribution facilities were well organized and transparent.

EXPORT SUBSIDIES

Panamanian law allows any company to import raw materials or semi-processed goods at a duty of three percent for domestic consumption or production, or duty free for export production. In addition, companies not already receiving benefits under the 1986 Special Incentives Law are allowed to deduct from taxes up to 10 percent of profits from export operations through 2002. The 1994 Tourism Law (Law 8) allows deduction from taxable income of 50 percent of any investment by Panamanian citizens in tourism development.

Panama has revised its export subsidy policies to be WTO-consistent. Tax Credit Certificates (CATs), which used to be given to firms producing non-traditional exports when the exports' national content and value added both met minimum established levels, will be phased out by 2001. Until then exporters may receive CATs equal to 15 percent of the exports' national value added. The certificates are transferable and may be either used to pay tax obligations or sold in secondary markets at a discount. The government has become stricter in defining national value added, attempting to reduce the amount claimed by exporters.

To attract FDI, the GOP exempts industries that produce exclusively for export (e.g. shrimp farming and tourism) from paying certain types of taxes and import duties. These companies are not eligible to receive CATs. “Export processing zones" (EPZ's) are part of an effort based on the “maquila” model to broaden the Panamanian manufacturing sector and promote investment in former U.S. military bases reverting to Panamanian control. Companies operating in EPZs may import inputs duty-free if products assembled in the zones are to be exported. The GOP also provides other tax incentives to EPZ companies. Thus far five EPZ's are operating, two in Colon and three in Panama City. All are in early stages of development with few tenants.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Recent legislation strengthened Panama's IPR regime and enforcement has improved, but piracy and counterfeiting remain problems, especially in the Colon Free Zone (CFZ). In addition to the revenues lost by companies due to piracy and counterfeiting, deficiencies in the IPR protection and enforcement regime constitute a significant impediment to foreign investment and technology transfers. A report prepared by the International Intellectual Property Alliance (IIPA) estimates that copyright infringements in Panama cost U.S. firms $25.7 million in 1998.

Law 15 of 1994 (the Copyright Law) and Law 35 of 1996 (the Industrial Property Law) provide the intellectual property protection framework. Panama implemented the WTO Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs) upon WTO accession, with no transition. Early in 1999, the GOP is expected to present draft legislation to consolidate the Copyright Office and the Industrial Property Registry into an autonomous Institute for Intellectual Property. In 1998 the GOP made some efforts to enforce intellectual property rights in the CFZ. A new IPR Department in the CFZ teamed with CFZ Customs office conducted 20 raids. Nevertheless, enforcement in the CFZ against piracy has not improved significantly and piracy abounds. U.S. companies continue to view the CFZ with concern.

Copyrights

Large and medium-sized illicit video reproduction laboratories and wholesale distributors of pirate product exist throughout Panama. While the GOP has raided many video clubs in Panama City and seized thousands of videos, the Panamanian courts have not imposed penalties sufficient to deter piracy.

Patents

The Industrial Property Law provides 20 years of patent protection from the date of filing for all patent holders. Pharmaceutical patents are granted for only 15 years, but can be renewed for an additional 10 years if the patent owner licenses a national company (minimum of 30 percent Panamanian ownership) to exploit the patent.

Trademarks

Law 35 provides trademark protection, simplifying the process of registering trademarks and making them renewable for ten-year periods. It grants ex-offico authority to government agencies to conduct investigations and to seize materials suspected of being counterfeited, although there have been several instances where officials in the CFZ claimed they did not possess this authority. Although the 1996 Industrial Property Law specifically protects trade secrets, it has yet to be tested. The 1996 Anti-Monopoly Law (Law 29) established special courts to deal with IPR cases; in 1997 two district courts and one superior tribunal began adjudicating patent and trademark disputes. Under Law 35, IPR policy and practice in Panama is the responsibility of an Inter-institutional Committee, which coordinates enforcement actions and develops strategies to improve compliance with the law.

In April 1998, Panama was again placed in the Special 301 "other observations" category. USTR ended its out-of-cycle review of Panama's protection of intellectual property in October 1998, which was undertaken in response to a 1995 petition filed by Nintendo of America and associated U.S. companies under the Generalized System of Preferences (GSP) program. USTR concluded that Panama has improved its IPR protection over the past several years. Nevertheless, the GOP needs to strengthen its enforcement capacity in the CFZ, where counterfeit merchandise continues to be transshipped for distribution.

INVESTMENT BARRIERS

Panamanian law prohibits foreign government ownership of land, limiting OPIC programs that require land as collateral, but it places no legal limitations on foreign private investment or ownership. There are no performance requirements such as minimum export percentages or significant local procurement rules. Panama does not have an investment screening mechanism.

In accordance with the terms of the U.S.-Panama Bilateral Investment Treaty (BIT), Panama places no restrictions on the nationality of senior management. Panama does restrict foreign nationals to 10 percent of the blue-collar work force, however, and specialized or technical foreign workers may number no more than 15 percent of all employees in a business. A 1995 revision of the labor code eased restrictions on companies for dismissing employees.

ELECTRONIC COMMERCE

There are no known tariff or non-tariff measures, burdensome or discriminatory regulations, or discriminatory taxation affecting electronic commerce.

OTHER BARRIERS

The judicial system can pose a problem for investors, due to poorly trained personnel, huge case backlogs, lack of independence, and vulnerability to potential outside influences. In addition, corruption persists. High profile cases such as the ports privatization discussed under Government Procurement, the firing of over 50 Customs officials in 1996, and the dismissal of the airport Customs chief in1998 amid allegations of corruption fuel the perception of corruption. This issue is clearly a serious concern of representatives of U.S. firms already located in Panama.

PARAGUAY

In 1998, the U.S. trade surplus with Paraguay was $752 million, a decrease of $120 million from the 1997 surplus of $872 million. U.S. merchandise exports to Paraguay were $786 million, a decrease of $127 million (13.9 percent) from 1997. Paraguay was the United States' 58th largest export market in 1998. U.S. merchandise imports from Paraguay were $33 million in 1998, a decrease of $7 million (17.7 percent) from 1997. The most recent available statistics (1998) indicate the stock of U.S. foreign direct investment (FDI) in Paraguay was $151 million.

IMPORT POLICIES

Paraguay has a relatively open trade regime. As a member of the Southern Cone Common Market (MERCOSUR, acronym in Spanish), Paraguay has had to increase its tariffs to comply with the MERCOSUR common external tariff (CET) of between 0 and 23 percent. Paraguay maintains almost 400 exceptions to the CET, allowing it to keep these tariffs below the CET levels. These tariffs will increase annually, reaching parity with the CET in 2006. Paraguay was also granted over 300 exceptions to the 1997 CET increase, which is scheduled to expire at the end of the year 2000.

Presidential Decree 235 of August 28, 1998, arbitrarily increases the base value upon which the excise taxes on various imported products, including beer and cigarettes, are calculated. The CIF value of these imported goods is increased by a multiplier of 50 to 30 percent prior to calculation of the excise tax, in apparent violation of the national treatment requirements of the General Agreement on Tariffs and Trade of 1994 (GATT).

Further, Decree 235 requires importers to pay taxes on “presumed profit” of 30 percent of the total value of the imported goods prior to removing imported merchandise from customs. Domestic producers of the affected products are not required to pay taxes on presumed business earnings in this fashion. In some cases, this system reportedly forces importers to pay over three times the amount of income tax owed when calculated on actual profits, and the importer is not reimbursed the tax differential when profits fall below the “presumed” 30 percent rate. The discriminatory nature of this policy is obvious.

According to Paraguayan customs data, exports of popular U.S. beers in Paraguay dropped by 64 percent between 1997 and 1998, a $13.4 million decrease in sales. U.S. cigarette exports to Paraguay dropped by 37 percent over the same period, an $18.7 million decrease in sales.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Franchisees of U.S. fast food companies complain of the onerous burden created by Agriculture Ministry Resolution 90, dated May 8, 1996. The Resolution requires that Paraguayan Agriculture Ministry officials certify factories producing imported meat and cheese, generally located in neighboring countries or the United States. The cost of this certification is borne by the importer, and implementation of the Resolution is reportedly inconsistent.

GOVERNMENT PROCUREMENT

U.S. companies have protested non-transparent procurement procedures, citing: bid specifications that favor a preferred supplier; allowance of parent companies’ subsidiaries to each submit bids, while counting these bids toward the minimum qualifying bids to validate the tender process; discriminatory usage of bid procedures to disqualify a non-preferred supplier; and permitted non-compliance with tender requirements by preferred suppliers. Improving the terms of a contract once the bid has been finalized is also permitted, allowing a preferred supplier to submit an extremely low bid to win a tender, knowing that profits will be made based on future changes.

LACK OF INTELLECTUAL PROPERTY PROTECTION

On January 16, 1998, the USTR identified Paraguay as a Priority Foreign Country under the Special 301 provisions of the Trade Act of 1974. On February 17, 1998, the United States initiated a section 301 investigation of Paraguay's acts, policies and practices regarding intellectual property. This investigation was extended for an additional 3 months on August 4, 1998, in light of the complex and complicated issues involved and to provide an opportunity to continue negotiations with the Cubas Grau Administration, which took office in August 1998. The extension of the investigation moved the deadline for the U.S. Trade Representative's determination in this case to November 17, 1998.

In November 1998, the U.S. Government and the Government of Paraguay signed a comprehensive Memorandum of Understanding (MOU) on the protection of intellectual property, which in conjunction with progress made by the Cubas Grau administration in this area, allowed the United States to remove Paraguay from its Priority Foreign Country status and to terminate the Section 301 investigation. However, continued high levels of piracy and counterfeiting led the USTR to determine that certain acts, policies and practices of the Paraguayan Government were "unreasonable or discriminatory and burdens or restricts U.S. commerce." In the MOU, the Paraguayan Government committed to implement institutional reforms to strengthen intellectual property rights enforcement at its borders, and to pursue legal amendments to facilitate effective prosecution of copyright piracy. Paraguay also committed to take immediate action against known centers of piracy and counterfeiting, such as Cuidad del Este, and to coordinate the anti-piracy efforts of its customs, police, prosecutorial and tax authorities. In addition, Paraguay agreed to pursue reform of its patent law, and to ensure that its government ministries use only authorized software.

Paraguay is currently subject to Section 306 monitoring, and Paraguayan implementation of the MOU has been uneven thus far. This led the U.S. Government to extend the "Special Enforcement Period" (SEP) of the MOU, scheduled to expire on March 15, 1999, by six months to September 15, 1999. The United States continues to closely monitor Paraguayan implementation of the MOU.

Copyrights and Trademarks

Despite several positive steps and major seizures conducted in coordination with the affected industries from August to November of 1998, Paraguay continues to be a regional center for piracy and counterfeiting and a transshipment point to the larger markets bordering Paraguay, particularly Brazil.

In October 1998, a new copyright law was passed that is generally consistent with Paraguay's international obligations. Notable is the protection of software as a literary work. However, the Government of Paraguay has not provided adequate and effective enforcement of its laws to address the piracy problem, and in practical terms piracy remains rampant. An outstanding shortcoming of the law is the designation of copyright piracy as a private, rather than a public crime, thus requiring legal action by the offended party to seek redress. The U.S. Government has strongly urged Paraguay to rectify this situation by making copyright piracy subject to public prosecution. The Government of Paraguay has consulted with the U.S. Government concerning possible solutions to this problem, but no action has been taken to date.

On a positive note, special public prosecutors have been named to deal exclusively with intellectual property crimes. Nevertheless, no significant smuggler of pirated goods yet has been prosecuted and sentenced to jail, and resolution of intellectual property cases in the courts is slow and non-transparent. A Paraguayan decree, dated December 31, 1998, calls for the use of only legal software in all federal agencies.

A new trademark law was enacted in August 1998 and provides specific protection for well-known trademarks. Stronger enforcement measures and penalties for infractions are also included in the law, but enforcement remains deficient.

Patents

Paraguay does not provide adequate and effective patent protection, especially with regard to pharmaceutical and agricultural chemical products. The Paraguayan Congress has not taken up a bill for a comprehensive patent law. A proposed bill faces significant local opposition, particularly from the domestic pharmaceutical sector.

Other Intellectual Property Areas

To date, the U.S. Government has no indication that the Government of Paraguay provides TRIPs-consistent protection for industrial designs, the layout-designs of integrated circuits, or undisclosed information (trade secrets and test data) as required by TRIPs. Paraguay joined the UPOV Convention in 1997, but implementing regulations have not been promulgated.

SERVICES BARRIERS

Telecommunications Services

ANTELCO, the state run phone company, has blocked nearly all call back services to the United States, thus maintaining a monopoly on long-distance phone service originating in Paraguay.

OTHER BARRIERS

Law 194/93 established the legal regime governing relationships between foreign companies and their Paraguayan representatives. This law requires that foreign companies prove “just cause” in a Paraguayan court to terminate, modify or fail to renew contracts with Paraguayan distributors. Severe penalties and high fines result if the court determines that the relationship was ended by the foreign company without such “just cause,” often leading to expensive out-of-court settlements. The rights under this law cannot be waived as part of contractual relationships between the parties. Several U.S. companies have singled out this law as a cause for concern.

PERU

In 1998, the U.S. trade surplus with Peru was $79 million, a decrease of $108 million from the U.S. trade surplus of $187 million in 1997. U.S. merchandise exports to Peru were approximately $2.1 billion, an increase of $96 million (4.9 percent) from the level of U.S. exports to Peru in 1997. Peru was the United States' 41st largest export market in 1998. U.S. imports from Peru were about $2.0 billion in 1998, a increase of $205 million (11.6 percent) from the level of imports in 1997. The stock of U.S. foreign direct investment in Peru in 1997 was $2.6 billion, an increase of 23.9 percent from 1996.

IMPORT POLICIES

Tariffs

Peru's most recent tariff reform went into effect in April 1997, lowering the average tariff rate from 16 to 13 percent but raising tariffs on agricultural products and imposing an additional "temporary" tariff on agricultural goods. Under the current system, a 12 percent tariff applies to more than 95 percent (by value) of goods imported into Peru; a 20 percent tariff to most of the rest; while a few products are assessed rates (because of the additional "temporary" tariffs) of up to 25 percent.

In addition to the "temporary" tariffs on agricultural goods, Peru has applied another set of "temporary" import surcharges since 1991 on five basic commodities: wheat, rice, corn, sugar and milk products, although in July 1998, the Government eliminated the surcharge on wheat. These surcharges are in addition to any applicable tariff. The surcharges are calculated on a weekly basis, according to prevailing international prices for each commodity, rather than the actual price of the commodities entering Peru.

On August 1, 1997, Peru officially rejoined the Andean Community's free trade area (FTA) -- from which it had been absent since 1992 -- but will not fully participate in the FTA until 2005. A large proportion of trade between Peru and the other Andean Community members, however, is already tariff-free, and most of the remaining tariffs will be eliminated by 2002. Peru does not adhere to the Andean Community's common external tariff. In April 1998, the Andean Community signed a framework agreement with MERCOSUR to establish a free trade area after the year 2000. In June 1998, Peru signed a free trade agreement with Chile, which will be phased in over a number of years. Peru also has partial free trade agreements which grant tariff preferences to most Latin American countries under the Latin American Integration Association (ALADI) and is negotiating a free trade agreement with Mexico.

Nontariff Measures

Almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions, and quantitative restrictions, have been eliminated. However, the following imports are banned: several insecticides, fireworks, used clothing, used shoes, used tires, radioactive waste, cars over five years old, and trucks over eight years old. Imported used cars and trucks that meet these age limits must pay a 45 percent excise tax -- compared to 20 percent for a new car -- unless they are refurbished in an industrial center in the south of the country upon entry. Import licenses are required for firearms, munitions and explosives, chemical precursors (used in illegal narcotics production), ammonium nitrate fertilizer, wild plant and animal species, and some radio and communications equipment.

Peru applies a value-added tax (VAT) rate of 18 percent to most products, and special consumption taxes, ranging from 10 to 50 percent, to certain items. Peru's methodology of applying a "consolidated rate" to assess special consumption and sales taxes on imported goods is burdensome, since the taxes are applied consecutively.

Under a 1992 customs reform, most import shipments above $5,000 must be pre-inspected by contracted supervising firms to check for possible under-invoicing. The importer pays the cost of these inspections, which reach as much as one percent of the f.o.b. value of the goods. Some U.S. exporters have complained of excessive delays caused by the pre-inspection system, although the problem has recently improved.

GOVERNMENT PROCUREMENT

A new government procurement law was passed in August 1997, and the implementing regulations were published in September 1998. The law created an independent board to oversee government purchases and contracts and authorized special committees to be responsible for new purchases and contracts. Under the new law, public entities must prepare an annual purchasing plan in order to promote transparency in the process. There is no limitation on foreign participation in any government solicitations.

EXPORT SUBSIDIES

Peru does not provide any direct payment upon export. Exporters can, however, receive rebates of a portion of the tariffs and value-added taxes paid on their inputs. In June 1995, the Government approved a simplified drawback scheme, which allows small exporters to claim a flat five percent rebate, subject to certain restrictions.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Peru does not yet provide adequate and effective protection of intellectual property rights (IPR). Peru passed two laws in April 1996 which improved the country's IPR regime and brought national laws into conformity with Andean Community decisions; and, in June 1997, the government issued an executive decree improving several aspects of its industrial property rights law. However, the Government will still need to make further improvements to these laws -- to be in compliance with the WTO's Agreement on Trade-Related Aspects of Intellectual Property (TRIPs) -- by the year 2000, when the transition period for developing countries ends. Peru has been on the "Watch List" under the Special 301 provisions of the 1988 Trade Act since 1992.

Enforcement of intellectual property rights continues to improve. Although piracy continues to be a serious problem in Peru, two important indexes -- those for video and software piracy -- have dropped significantly in recent years.

Patents and Trademarks

Peru's April 1996 industrial property decree provides an effective term of protection for patents, prohibits devices that decode encrypted satellite signals, and contains other improvements, such as increasing the term of protection for industrial designs. In June 1997, based on an agreement reached with the U.S. Government, the Government of Peru published an executive decree resolving several inconsistencies in the patent area between its 1996 industrial property law and the TRIPs agreement. The Government has also introduced legislation confirming its decree. Peruvian law does not provide for transitional ("pipeline") protection for pharmaceutical product patents or protection against parallel imports. Trademark violations are also widespread.

Copyrights

Peru's 1996 copyright decree is generally consistent with TRIPs; however, it also contains provisions covering reciprocity, which appear to violate the MFN provisions in Article 4 of the TRIPs agreement. Textbooks, books on technical subjects, audiocassettes, motion picture videos, and software are widely pirated.

Losses to U.S. copyright owners and pharmaceutical companies in Peru are extensive, despite improvement in IPR protection under the new laws and better enforcement. U.S. companies have become more active in defending their interests in Peru by retaining local representation, conducting anti-piracy campaigns and investigations, and filing complaints with the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) and the courts. However, industry reports long delays by INDECOPI's appellate tribunal in deciding cases. Also, on a number of occasions the appellate tribunal has severely reduced administrative fines imposed by the copyright office. U.S. industry has collaborated actively with the U.S. Embassy in sponsoring conferences and in meeting with the Peruvian Government to raise awareness of the negative economic impact of lax IPR enforcement.

SERVICES BARRIERS

Basic Telecommunications Services

In the WTO negotiations on basic telecommunications services, concluded in March 1997, Peru made commitments on all basic telecommunications services, with full market access and national treatment to be provided as of June 1999. Advancing that timetable by almost a year, Peru opened its telecommunications sector as of August 1, 1998. Peru now allows competition in virtually all areas of telecommunications, meeting all of its commitments in its WTO offer.

Financial Services

In the WTO negotiations on financial services, concluded in December 1997, Peru made broad-based market access commitments in financial services -- in banking, securities, insurance and other financial services. Peru allows 100 percent foreign ownership in subsidiaries and branches in the sector and guarantees national treatment. The only reservations Peru maintained in the offer were with respect to cross border provision of financial services, with the sole exception being cross-border provision of financial data.

INVESTMENT BARRIERS

Peru has greatly liberalized its investment regime since 1990. National treatment for foreign investors is guaranteed in the 1993 constitution. Foreign investment does not require prior approval, except in banking and defense-related industries. "Juridical stability agreements" are available to foreign investors whereby the Government of Peru guarantees tax, foreign exchange and regulatory stability for a period of ten years.

Investors in the mining and petroleum sectors are also entitled to several tax benefits. There are no restrictions on remittances of profits, dividends, royalties or capital.

Arbitration is a constitutionally guaranteed alternative to the courts. The September 1993 establishment of the Lima Chamber of Commerce's International Arbitration Center has helped to institutionalize this option. Peru also is a signatory to the New York Agreement on the Enforcement of International Arbitral Awards as well as several other international dispute settlement agreements.

Rules regarding hiring foreign personnel have been liberalized, although foreign employees still may not make up more than 20 percent of the workforce of a company established in Peru -- whether owned by foreign or national interest -- and their combined salaries may not account for more than 30 percent of the total payroll. Services companies, including banks, and free trade zones are exempted from these hiring limitations. In addition, a company may apply for exemption from the limitations for foreign managerial or technical personnel.

Peru has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content requirements in the milk and milk products sector. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Peru therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

PHILIPPINES

In 1998, the U.S. trade deficit with the Philippines was $5.2 billion, an increase of $2.2 billion from the 1997 surplus of $3.0 billion. U.S. exports to the Philippines were $6.7 billion, a decrease of $691 million (9.3 percent) from 1997. The Philippines was the United States' 21st largest export market in 1998. U.S. imports from the Philippines were $11.9 billion in 1998, an increase of $1.5 billion (14.5 percent) from 1997. The most recent available statistics (1998) indicate the stock of U.S. foreign direct investment (FDI) in the Philippines was $3.4 billion.

The stock of U.S. foreign direct investment (FDI) in the Philippines in 1996 was $3.3 billion, an increase of 32.3 percent from the level of U.S. FDI in 1995. U.S. FDI in the Philippines is concentrated largely in the manufacturing and banking sectors.

IMPORT POLICIES

Tariffs

Under the Philippine Government's comprehensive tariff reform program, set out in Executive Orders (E.O.) 264 and 288, applied MFN tariff rates for all items except sensitive agricultural products are being gradually reduced to target rates of 3 percent for raw materials and 10 percent for finished products by January 2003, and to a uniform 5 percent tariff rate by January 2004. While the Philippines has indicated that it remains committed to these ultimate tariff levels, the Government in 1998 made extensive changes to the rate reduction schedule set out in E.O. 264 for the period 1998-2000.

In response to requests from import-sensitive industry sectors (including the petrochemicals, garment and apparel, rubber, steel, and forest product industries) the Philippines recalibrated the rate reduction schedule for a number of product categories in 1998. E.O. 465 and E.O. 486, which became effective on January 21, 1998 and July 7, 1998, respectively established new applied tariff rates for many items. Rates for some products will now be reduced more gradually. Applied duty rates were increased for some tariff headings, including garments, textiles, certain petrochemicals, ammunition, and unfinished automotive vehicles imported in kit form, but reduced rates on some other items of interest to U.S. exporters, including some agricultural products. For still other tariff lines, E.O. 465 and E.O. 486 retained 1997 duty rates in 1998, or postponed until 1999/2000 reductions in duties originally envisaged for 1998.

In September 1998, the new Administration of President Estrada agreed to consider requests by import-sensitive manufacturers for selected tariff increases, setting aside a policy of waiting at least 12 months following changes to rates before initiating any review of those new rates. The Philippine Tariff Commission held two sets of public hearings on private sector petitions urging the modification (generally to increase) duty rates. In January 1999, President Estrada signed E.O. 63, adjusting tariff rates on a range of products. The main changes of interest to U.S. companies include increases in the MFN applied tariff rates on yarns, threads, fabric, apparel, and kraft liner paper. Higher rates on these products were originally imposed in January 1998 by E.O. 465 for one year only; E.O. 63 extends these rates through 1999. Rates on these items are supposed to return to 1997 levels in the year 2000.

Imports of finished automotive vehicles (completely built-up units) are subject to a 40 percent tariff as an incentive to promote local assembly under the Philippines' Motor Vehicle Development Program. The duty rate on automotive vehicles is currently the highest duty rate applied to non-agricultural products, and is not scheduled to be reduced to 30 percent until the year 2000. As part of the Philippine Government's decision in 1997 to slow the pace of accelerated tariff reduction on certain items, and in some cases raise tariffs, E.O. 465 increases tariffs on completely-knocked down (CKD) automotive vehicle imports from 3 percent to 7 percent in 1998, and 10 percent in 1999.

Agriculture Tariffs and Import Licensing

The Philippines maintains high tariff rates on sensitive agricultural products, including grains, livestock and meat products, sugar, certain vegetables, and coffee. Examples include feed grains, particularly corn (at an in-quota rate of 35 percent, and an out-of-quota rate of 80 percent which is to be reduced to 65 percent effective July 1, 1999), sorghum (20 percent in quota , which is to be reduced to 15 percent effective July 1, 1999) and potatoes (in-quota rate of 45 percent, 80 percent out-of-quota rate which is to be reduced to 60 percent effective July 1, 1999).

Fifteen tariff lines of agricultural commodities (at the 4 digit HS level) are subject to minimum access volume (MAV) tariff-rate quotas (TRQs). Products covered by these TRQs include live animals, fresh and chilled beef, chilled pork, poultry meat, goat meat, potatoes, coffee, corn, and sugar. Administrative Order (A.O.) 9 of 1996, as amended by A.O. 8 of 1997 and A.O. 1 of 1998, established the rules by which these TRQs are implemented and import licenses are allocated. The United States had been concerned that the TRQs for pork and poultry meat were administered in a manner which allocated a vast majority of import licenses to domestic producers which had no interest in importing.

Due to the questionable WTO-consistency of the manner in which the Philippine TRQ system had been administered, the United States and other WTO members held formal consultations with the Philippines under WTO dispute settlement procedures in 1997. Following intensive consultations, the Governments of the United States and the Philippines concluded a Memorandum of Understanding (MOU) in February 1998 which resolved the United States' primary concerns over the Philippine TRQ system. The reforms embodied in the MOU are expected to shift gradually import licenses from licensees not utilizing their licenses to active importers and will be closely monitored by the United States. An initial review of MAV imports for 1998 shows little improvement, although this is largely attributable to the depreciation of the Philippine Peso since July 1997. An examination of the distribution of licenses reveals some progress in the administration of the TRQ system.

Excise Tax on Distilled Spirits

U.S. producers of distilled spirits have complained that current Philippine law has the effect of subjecting imported distilled spirits to a higher excise tax than that applied to domestic spirits. Distilled spirits produced from indigenously available materials (such as coconut palm, cane, and certain root crops) are subject to a specific tax of 8 pesos per proof liter. Distilled spirits produced from other raw materials (which would apply to most imports) are subject to a specific tax ranging from 75 pesos to 300 pesos per proof liter (depending on net retail price per 750 ml bottle). Still wines with an alcohol content of 14 percent or less by volume are assessed an excise tax of 12 pesos per liter while still wines with an alcohol content greater than 14 percent but less than 25 percent alcohol content by volume are charged an excise tax of 24 pesos per liter. Fortified wines (containing greater than 25 percent alcohol content) are taxed as distilled spirits. Depending on the net retail price per bottle, an excise tax of 100 pesos or 300 pesos per liter is assessed on sparkling wines.

Excise Tax on Automotive Vehicles

The Philippine Government's excise tax regime for automotive vehicles includes tiers based on engine displacement rather than vehicle value. This system serves to discriminate against imports of vehicles with larger engine displacement, which includes many U.S. exports. Current tax rates for motor vehicles with gasoline (non-diesel) engines are: 15 percent for engines up to 1600 cubic centimeters (cc); 35 percent for those with engines between 1601-2000cc; 50 percent for those between 2001-2700cc; and 100 percent for those 2701cc and above. For motor vehicles with diesel engines, excise rates are 15 percent for engines of up to 1800cc; 35 percent for those 1801-2300cc; 50 percent for those 2301-3000cc; and 100 percent for those 3001cc and above.

Quantitative Restrictions

The Philippines retains quantitative restrictions on rice. The rice quota is 68,645 metric tons for 1998, although the country is expected to import considerably more. Rice continues to be imported solely by the National Food Authority, although the Department of Agriculture is discussing the possibility of allowing the private sector to import some rice during 1999. The United States continues to urge the Philippines to consider eliminating the quantitative restriction on rice in the context of upcoming WTO agriculture negotiations.

Other Import Restrictions

Imports of used automotive vehicles and coal remain subject to government review and approval. Certain items, including firearms, ammunition, narcotics and other dangerous drugs, hazardous wastes, ozone depleting substances, and color photocopying equipment are subject to import regulation for public health, morality, and/or national security reasons. Executive Order 776, issued in 1982, has the effect of restricting imports by requiring that pharmaceutical firms purchase semi-synthetic antibiotics from a single local producer unless it is demonstrated that the landed cost of imported semi-synthetic antibiotics is at least 20 percent less than the cost of those produced locally. The United States has protested a June 3, 1998 Order from the Office of the President, which has the effect of prohibiting the importation and sale of certain cast-iron hubless pipe, until such time as certain regulations are amended to explicitly permit its use.

Customs Barriers

The Philippine Government retains the services of a private company to perform preshipment invoice inspection and valuation and customs clearance procedures of imports arriving in the Philippines. The contract between the Philippine Government and the private company for performance of inspection services, originally set to terminate in March 1998, has been extended through December 31, 1999.

As a policy matter, the United States has repeatedly expressed concerns that the Philippine Government put a strong focus on improving administration of its customs regime, rather than retain a private, for-profit company to carry out vital customs clearance and revenue collection functions ordinarily maintained by governmental authorities. Moreover, as a commercial matter, the United States has repeatedly reiterated to the Philippine Government that the actions of the private entity and its agents constitute import harassment. These abuses include failure to issue documents required by the WTO Agreement on Preshipment Inspection (PSI), arbitrary and unjustified increases or “uplifts” of the invoice value of imports, and demands for undocumented payments of “facilitation” fees which are not related to the cost of services rendered.

Many imports valued at more than $500 are permitted entry only when accompanied by a “Clean Report of Findings” (CRF) issued by the private entity at the point of export. However, U.S. exporters report that many of the basic procedural requirements under the WTO PSI Agreement related to transparent and efficient customs procedures are not consistently maintained, resulting in valuation and clearance problems when the goods arrive in the Philippines. Refrigerated products and most products destined for export-processing zones are exempt. Certain goods require mandatory preshipment inspection in the country of export. This preshipment inspection requirement extends to exports to certain operations in free-trade zones.

The appeal process for considering grievances by importers seeking to challenge decisions by the private entity lacks transparency and perpetuates an unacceptable and inappropriate conflict of interest, as representatives of the private entity sit on the appellate board deciding the complaints filed against its own conduct. Moreover, the appeals process, while available, is time consuming and requires that the exporting company or importer pay the uplifted valuation to obtain release of the shipment in question, or have it impounded pending the outcome of the appeal, with storage costs to be borne by the exporter or importer.

The Philippines has used provisions allowing developing countries to delay implementation of obligations under the WTO Agreement on Customs Valuation, including use of the "transaction value" method of customs valuation. Republic Act (R.A.) 8181, which abolished use of "home consumption value," authorized a shift to the use of the WTO-mandated “transaction value” methodology no later than December 31, 1999. However, it adopted the use of "export value" (also known as the "Brussels definition of value") as an interim measure until such time as transaction value is implemented.

In valuation and other areas, a 1997 memorandum of understanding between the Bureau of Customs and two Philippine industry associations creates formal channels for local private industry, including firms which produce goods that compete with imports, to influence valuation and other customs clearance procedures. Regulations issued in October 1998 further institutionalized the ability of local firms to seek upward adjustments in customs valuation of imported products.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Industrial Goods

Local inspection for standards compliance is required for a range of industrial and consumer products, including cosmetics, medical equipment, lighting fixtures, electrical wires and cables, cement, pneumatic tires, sanitary wares, and household appliances. For other goods, U.S. manufacturers’ self-certification of conformance is accepted. Labeling is mandatory for textile fabrics, ready-made garments, household and institutional linens, and garment accessories. Mislabeling, misrepresentation, or misbranding may subject the entire shipment to seizure and disposal. The “Generic Act” of 1988 aims to promote the use of generic drugs by requiring that the generic name of a particular pharmaceutical must appear above its brand name on all packaging.

Agricultural Goods

The Philippine Department of Agriculture has established plant health regulations which allow the import of U.S. apples, grapes, oranges, potatoes, onions, and garlic, provided these products do not originate from Florida or Texas. Protocols are being negotiated for a range of other fruits and vegetables, including Florida citrus, cherries, broccoli, lettuce, and cauliflower. Additional produce items can be negotiated as the need arises.

Further, the Philippine Government's zero tolerance policy for methanol in wine products has posed a concern for exporting alcohol industries. This policy requires that a manufacturer's report on the manufacturing process be submitted to the Philippine Bureau of Food and Drug (BFAD) for evaluation.

GOVERNMENT PROCUREMENT

Contracts for government procurement are awarded by competitive bidding which, in general, do not discriminate against foreign bidders. However, preferential treatment of local suppliers is practiced in government purchases of pharmaceuticals, rice, corn, and iron/steel materials for use in government projects. Contractors for infrastructure projects that require a public utility franchise (i.e., water and power distribution, telecommunications, and transport systems) must be at least 60 percent Filipino-owned. For other major contracts (such as build-operate-transfer projects) not involving a public utility franchise, a foreign contractor must be duly accredited by its government to undertake construction work. The Philippines is not a signatory of the WTO Government Procurement Agreement (GPA).

Executive Order 120, dated August 19, 1993, mandates a countertrade requirement for procurements by government agencies and government-owned or controlled corporations that entail the payment of at least U.S. $1 million in foreign currency. Implementing regulations issued by the Department of Trade and Industry set the level of countertrade obligations of the foreign supplier at a minimum of 50 percent of the import price, and provide for penalties for non-performance of countertrade obligations. The implementing agency for countertrade transactions is the Philippine International Trading Corporation.

EXPORT SUBSIDIES

Enterprises (including exporters) engaged in activities under the Government's "Investment Priorities Plan" may register with the Board of Investments (BOI) for fiscal incentives, including four to six year income tax holidays; a tax deduction equivalent to 50 percent of the wages of direct-hire workers; and tax and duty exemptions for the importation of breeding stocks and genetic materials. BOI-registered firms that locate in less-developed areas may be eligible to claim a tax deduction of up to 100 percent of outlays for infrastructure works and 100 percent of incremental labor expenses. Firms in government-designated export processing zones, free trade zones, and other special industrial estates registered with the Philippine Economic Zone Authority (PEZA) enjoy basically these same incentives, plus tax and duty-free importation of capital equipment and raw materials, and exemption from preshipment inspection. In lieu of national and local taxes, PEZA-registered firms are subject to a 5 percent tax on gross income.

Firms which earn at least 50 percent of their income from exports may register with BOI or PEZA for certain tax credits under the Export Development Act, including a tax credit for imports of raw material or components not readily available locally (through December 31, 1999) and a tax credit on incremental annual export revenue.

LACK OF INTELLECTUAL PROPERTY PROTECTION

While substantial progress has been made in recent years, significant problems remain in ensuring the consistent and effective protection of intellectual property rights (IPR). A new intellectual property code (R.A. 8293) was signed into law on June 6, 1997, and took effect January 1, 1998, improving the legal framework for IPR protection in the Philippines. R.A. 8293 provides enhanced copyright and trademark protection, and creates a new Intellectual Property Office (IPO), with specific authority to resolve certain disputes concerning licensing; significantly increases penalties for infringement and counterfeiting; and relaxes provisions requiring the registration of licensing agreements. Passage of the law was called for under a 1993 bilateral U.S.-Philippine agreement to strengthen protection of intellectual property rights in the Philippines.

Defects in R.A. 8293 remain a source of serious concern. These included, *inter alia*, a provision permitting the decompilation of software programs as "fair-use," subject to certain restrictions; the lack of clear provisions for ex-parte relief; ambiguous provisions that fail to provide clearly an exclusive right for copyright owners over broadcast, rebroadcast, cable retransmission, or satellite retransmission of their works; and onerous restrictions affecting contracts to license software and other technology. Some provisions of R.A. 8293, while nominally in force, are currently unavailable to rights holders, because of organizational delays at the IPO. These include the right to pursue cases against IPR violators using the IPO's administrative complaint provisions.

Despite the creation in February 1993 of the Presidential Interagency Committee on Intellectual Property Rights (PIAC-IPR) to coordinate enforcement oversight and program implementation, serious problems continue to hamper the effective operation of agencies tasked with IPR enforcement. Resource constraints, already a problem, have been exacerbated by general governmental budgetary shortfalls, but joint efforts between the private sector and the National Bureau of Investigation (NBI) have resulted in some successful enforcement actions. The VRB has also undertaken increased enforcement efforts. Judicial unwillingness to impose meaningful penalties and sentences remains a stumbling block to more aggressive use of the courts to deter effectively IPR violations. The designation of 48 courts to handle IPR violations has done little to streamline the judicial proceedings in this area, as these courts have not received additional resources and continue to handle a heavy non-IPR workload. Because of the lengthy nature of court action, many cases are settled out of court. The Philippines remains on the Special 301 Watch List.

The Philippine Government is a party to the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty; it is also a member of the World Intellectual Property Organization, although it has not yet signed the WIPO treaties on copyright and performance rights/phonograms. The Philippines is a member of the World Trade Organization, but has utilized the transition period available to developing countries to delay implementation of the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPs) until January 1, 2000.

Patents

R.A. 8293 moves the Philippines to a first-to-file system, increases the term of patents from 17 to 20 years, and provides for the patent ability of micro-organisms and non-biological and microbiological processes. The holder of a patent is guaranteed an additional right of exclusive importation of his invention. A compulsory license may be granted in some circumstances, including if the patented invention is not being worked in the Philippines without satisfactory reason, although importation of the patented article constitutes working or using the patent. Legislation is pending to provide sui-generis IPR protection to plant varieties and to provide IPR protection to layout-designs of integrated circuits.

Trademarks

R.A. 8293 no longer requires prior use of trademarks in the Philippines as a requirement for filing a trademark application. The law also eliminates the requirement that well-known marks be in actual use in Philippine commerce or registered with the Government. Trademark counterfeiting remains widespread in the Philippines.

Copyright

R.A. 9293 expands IPR protection by clarifying protection of computer software as a literary work (although it includes a fair-use provision on decompilation of software), establishing exclusive rental rights in several categories of works and sound recordings, and providing terms of protection for sound recordings, audiovisual works, and newspapers and periodicals that are compatible with the WTO TRIPs Agreement. However, as noted above, significant gaps remain, including the fair-use provision on software decompilation; a lack of clear provisions for ex-parte relief; and ambiguities concerning exclusive rights for copyright owners over broadcast and retransmission. Ratification by the Philippines of the Berne Convention (Paris Act) in June 1997 effectively ended the longstanding government practice of authorizing local publishers to reprint foreign textbooks without permission of the foreign copyright holder.

Software piracy remains widespread. The Philippine Government has committed to eliminate the use of pirated software within government agencies, pursuant to Memorandum Circular 115, which orders government agencies to use only licensed, legitimate software. Software vendors believe compliance, though improved, remains uneven.

Despite positive, intensified cooperation with the government's Videogram Regulatory Board and actions by the NBI, U.S. distributors report a continued high level of unauthorized retail sale and distribution of audio and visual material and unauthorized transmissions of motion pictures and other programming on cable systems. Most digital media appear to be imported, although enforcement agents have raided some small-scale illegal reproduction operations. Philippine courts have been reluctant to impose substantial penalties, which serve as a deterrent for infringement; often, penalties consist only of the seizure and confiscation of the video cassettes or optical discs used in the unauthorized cable broadcast. Delays in the issuance of warrants are a problem. Arrests are infrequent. It remains to be seen whether the tougher penalties contained in R.A. 8293 will enhance enforcement. Legislation to expand the VRB's enforcement powers and increase penalties was reintroduced in 1998 and is pending before the Philippine Congress. The U.S. motion picture industry estimates annual losses due to audiovisual piracy in the Philippines amounted to $18 million in 1997.

Licensing of Technology

The Intellectual Property Office requires that all technology transfer arrangements (defined as contracts involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts, and the transfer, assignment or licensing of all forms of intellectual property rights, including computer software except for software developed for mass market) comply with provisions outlined in R.A. 8293, including the prohibition of the use of certain clauses in such arrangements. The scope of these provisions is extremely broad and serves to obstruct the normal contracting process between unrelated parties or as part of intra-company business.

SERVICES BARRIERS

Basic Telecommunications

The Philippine Constitution (Section 11 of Article XII) limits foreign ownership of telecommunications firms to 40 percent. During the WTO negotiations on basic telecommunications services, the Philippines made commitments on most basic telecommunications services and adopted some pro-competitive regulatory principles. The Philippines did not provide market access or national treatment for satellite services, and made no commitment regarding resale of leased circuits/closed user groups. However, the Philippines is long overdue in providing to the World Trade Organization an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect.

Insurance

Although current practice permits up to 100 percent foreign ownership in the insurance sector, the Philippines only committed to a WTO binding at a maximum level of equity participation at 51 percent. However, it grandfathered the status of existing insurers with more than 51 percent foreign equity. As a general rule, only the state-owned government service insurance system may provide coverage for government-funded projects. A 1994 administrative order extended this policy to Build-Operate-Transfer (BOT) projects. Private insurance firms, both domestic and foreign, regard this as an important trade barrier. Current regulations require all insurance/professional reinsurance companies operating in the Philippines to cede to the industry-owned National Reinsurance Corporation of the Philippines (NRCP) at least 10 percent of outward reinsurance placements.

Banking

May 1994 legislation permitted 10 foreign banks to open full-service branches in the Philippines. A foreign entry bank may also own up to 60 percent of a new or existing local subsidiary, although the Philippines only bound foreign ownership at 51 percent in its WTO financial services offer. Foreign branch banks are limited to six branches each. Four foreign-owned banks that had been operating in the Philippines before 1948 were each allowed to open up to six additional branches. Current regulations also provide that majority Filipino-owned domestic banks should, at all times, control at least 70 percent of total banking system assets. The revised banking law now allows a foreign branch bank to obtain a "universal banking" license which was previously limited to Philippine-controlled commercial banks. This will allow a foreign branch bank to engage in the activities of an investment house (primarily securities underwriting for the domestic market), in addition to regular commercial banking functions.

Securities and Other Financial Services

Membership in the Philippine Stock Exchange (PSE) is open to foreign-controlled stock brokerages that are incorporated under Philippine laws. Foreign equity in mutual fund and trust management firms is limited to

40 percent, and in securities underwriting companies to 60 percent. Securities underwriting companies not established under Philippine law may underwrite Philippine issues for foreign markets, but not for the domestic market. Although there are no foreign ownership restrictions governing acquisition of shares of mutual funds, current law restricts membership in the board of directors to Philippine citizens. The Philippines took an MFN exemption on foreign equity participation in securities firms, stating that Philippine regulators would approve applications for foreign equity only if Philippine companies enjoy similar rights in the foreign investor's country of origin.

Advertising

The Philippine Constitution (Section 11 of Article XVI) limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers of advertising agencies must be Philippine citizens.

Public Utilities

The Philippine Constitution (Section 11 of Article XII) specifically limits the operation of public utilities (i.e., water and sewage, electricity, telecommunications) to firms with at least 60 percent ownership by Philippine citizens. All executive and managing officers of such enterprises must be Philippine citizens.

Practice of Professions

As a general rule, the Philippine Constitution (Section 14 of Article XII) reserves the practice of licensed professions (e.g., law, medicine, nursing, accountancy, engineering, architecture, customs brokerage, etc.) to Philippine citizens. Philippine law (R.A. 8182) also required that preference be given to Philippine citizens in the hiring of consultants and other professionals necessary for the implementation of projects funded by foreign assistance. Legislation signed in February 1998 (R.A. 8555) gives the President of the Philippines the authority to waive this and other preferences applicable to the procurement of goods and services funded by foreign assistance.

Shipping

The Maritime Industry Authority prohibits foreign flagged vessels from the carriage of domestic trade.

Express Delivery Services

Foreign air express couriers and airfreight forwarding firms must either contract with a wholly-owned Philippine business to provide delivery services, or establish a domestic company at least 60 percent of which should be Philippine-owned.

INVESTMENT BARRIERS

The 1991 Foreign Investment Act (FIA) contains two “negative lists” that outline areas where foreign investment is restricted. The restrictions stem from a Constitutional provision, Section 10 of Article VII, which permits the Philippine Congress to reserve to Philippine citizens certain areas of investment. The scope of these lists were updated by E.O. 11, signed August 11, 1998.

"List A" covers activities in which foreign equity is excluded or limited by the Constitution or other laws. No foreign investment is permitted in mass media (including cable television operators), retail trade, processing of corn and rice, small-scale mining, and private security agencies. In addition to land ownership (where a 40 percent foreign equity ceiling applies), foreign ownership limitations cover advertising (30 percent), recruitment (25 percent), financing (60 percent), securities underwriting firms (60 percent), public utilities (40 percent), education (40 percent), the operation of deep sea commercial fishing vessels (40 percent), public works (25 percent, except for projects registered with the Board of Investments and that are foreign-funded, where 100% foreign equity is permitted), and the exploration and development of natural resources (40 percent). Effective October 24, 1998, the Government eliminated private domestic construction activity from the foreign investment "negative" list, thereby lifting the 40 percent foreign ownership ceiling previously imposed on this activity. "List B" limits foreign ownership (generally to 40%) for reasons of public health, safety, morals, or national security.

The FIA also requires a minimum paid-in capital of U.S. $200,000 for an enterprise to be more than 40 percent foreign-owned. The Philippines generally imposes a foreign ownership ceiling of 40 percent on firms seeking incentives with the Board of Investments (BOI) under the annual investment priorities plan. While there are exceptions to the ceiling, divestment to reach the 40 percent level is required within 30 years or longer as allowed by the BOI. As a general policy, the Philippine Department of Labor and Employment allows the employment of foreigners provided there are no qualified Philippine citizens that can fill the position. However, the employer must train Filipino understudies and report on such training periodically. Employees of foreign-owned firms registered with the BOI may retain the positions of president, treasurer, and general manager, or their equivalents.

Trade-Related Investment Measures

The Philippines has availed itself of an allowance under the WTO Agreement on Trade-Related Investment Measures (TRIMs) to maintain certain measures which are otherwise inconsistent with obligations under the TRIMs Agreement. The Board of Investments imposes industry-wide local content requirements under its Motor Vehicle Development Program, and requires participants to generate, via exports, a certain percentage of the foreign exchange needed for import requirements. Regulations governing the provision of tax incentives impose a higher export performance for foreign-owned enterprises (70 percent of production should be exported) than for Philippine-owned companies (50 percent). In addition, there appear to be unwritten "trade balancing" requirements for firms applying for approval of ventures under the ASEAN Industrial Cooperation (AICO) scheme. WTO obligations require that the Philippines eliminate all these measures by January 1, 2000.

ELECTRONIC COMMERCE

Electronic transactions are not presently subject to any discriminatory trade restrictions or tax measures. At present, electronic documents do not have legal recognition in the Philippines. Legislation is pending in the Philippine Congress to give electronic documents legal standing.

OTHER BARRIERS

The Revised Penal Code, Anti-Graft and Corrupt Practices Act, and Code of Ethical Conduct for public officials are in place and are intended to combat suspected corruption and related anti-competitive business practices. The Office of the Ombudsman investigates cases of alleged graft and corruption involving public officials. The "Sandiganbayan" (anti-graft court) prosecutes and adjudicates cases filed by the Ombudsman.

In spite of these government mechanisms directed at combating suspected corruption, widespread anecdotal evidence suggests that graft remains a problem at many levels in all branches of the Philippine Government. In its 1998 survey of public perceptions of corruption in 85 countries, the non-governmental organization ranked the Philippines tied at sixteenth place in terms of the perceived level of corruption. The U.S. Embassy and the American Chamber of Commerce in Manila have in the past successfully represented U.S. business interests in cases where U.S. firms seemed disadvantaged because of reportedly questionable bid/award or other government proceedings.

POLAND

In 1998, the U.S. trade surplus with Poland was $99 million, a decrease of $374 million from the 1997 surplus of $473 million. U.S. exports to Poland were $882 million, a decrease of $289 million (24.7 percent) from 1997. Poland was the United States' 55th largest export market in 1998. U.S. imports from Poland were $783 million in 1998, an increase of $85 million (12.2 percent) from 1997. The most recent available statistics (1998) indicate the stock of U.S. foreign direct investment (FDI) in Poland was $1.2 billion.

IMPORT POLICIES

In the early 1990s, as part of the transition from a Communist to a free-market economy, Poland undertook commendable steps to stimulate trade by lowering or suspending tariffs. Despite some backsliding, such as an import surcharge in 1993-1996, Poland has generally followed the course of further liberalization and has reduced tariffs according to its commitments in the WTO as well as in preferential agreements such as its association agreement with the EU, and Central European Free Trade Agreement (CEFTA). With the exception of steel, petroleum products, and automobiles, all industrial products from the EU (since January 1, 1999), European Free Trade Area (EFTA), and CEFTA now have no duty levied on them.

As a result of Poland's 1991 Association Agreement with the EU, Poland has reduced or eliminated tariffs for EU goods across the board while MFN rates have been reduced much less, in line with Uruguay Round commitments. Under the terms of this agreement, tariffs for most industrial products (with the exception of vehicles, oil products, and steel) were eliminated completely as of January 1. 1999. Tariffs on some non-industrial EU products have also been reduced on a selective basis. The result has been that many U.S. products are subject to notably higher tariffs than similar EU products. Specifically, U.S. exporters of automobiles, small aircraft, autos, electrical generating equipment, mining equipment, lumber, distilled spirits, wine, soybean meal, durum wheat, peanut butter, chocolate and non-chocolate confections, and grapefruit have complained about this disadvantage. So far, Poland has responded to these complaints in the cases of autos and soybean meal, by unilaterally granting a reduction in customs duties on large engine automobiles and soybean meal. Presently, the International Trade Commission is conducting a study to assess the effects of the EU's association agreements with selected Central and Eastern European partners on U.S. trade. Its findings are due in April 1999.

There are exceptions to these general liberalization trends. Poland still maintains WTO-consistent tariff rate quotas on beef, pork, poultry meat and live poultry, milk, cream, sugar, eggs, honey, strawberries, apples, pears, juices and juice extracts, cucumbers, tomatoes, spices, rape seed, and certain other agricultural products. As a means of protecting its sugar industry, the Polish Government imposes additional duties on imported products containing sugar, but a number of EU products are exempt from these additional duties.

In the past year, Poland has shown an increased interest in using trade restrictions as protective measures. In mid-1998, Poland surprised its CEFTA partners by enacting tariff rate quotas on corn, starch, and tomato paste and halted further liberalization of other agricultural trade with these countries because of increased agricultural imports from them. In October 1998, Poland increased tariffs on pork from 60 to 80 percent (CEFTA and the EU have a slightly lower rate) in response to surplus production, increased imports, and a drop in exports caused mainly by the Russian crisis. Recent safeguard actions have resulted in increased duties for grains, cut flowers, shoes from China, and a tariff rate quota for coal from Russia.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Despite some improvement, importers of U.S. products continue to complain about a lack of transparency in the administration of tariff rate quotas, arbitrariness of some customs inspectors, and the burden of paperwork caused by the lack of electronic customs clearance. Poland's extensive system for the certification and approval of products is not harmonized with international standards. In the past, U.S. companies have complained about the length of time needed for product certification, testing requirements, fees, and the lack of transparency. Recently the number of such complaints from U.S. companies have declined. The most controversial part of the Polish certification regime is the "B" safety mark, which is required on certain products. The negative effects of the "B" mark have been mitigated by Poland's decision to allow companies to distribute products upon registration for "B" mark testing, rather than waiting for the results of the tests. This annual waiver has been renewed again for 1999. The lack of recognition of international marks such as the CE mark and the lack of self-certification are also problematic.

Recently, Polish authorities have been arbitrarily applying sanitary and phytosanitary standards which have periodically disrupted trade. For the past several years, Polish officials have maintained a zero-tolerance policy on several weed seeds including ragweed, common in imported grains and oilseeds. This policy has resulted in substantial export losses for U.S. grains, oilseeds, and oilseed products. In February 1999, Poland agreed to a review of its past risk analysis by an independent panel of experts. At the beginning of 1998, Polish authorities blocked the importation of gelatin and products containing gelatin without any scientific evidence of harm. Confronted in the WTO, Polish authorities withdrew the ban. Polish plant protection officials appear to be inconsistently interpreting the information required on phytosanitary certificates which results in shipment delays.

The Polish Government requires import permits for live plants, fresh fruits, vegetables, meat, and live animals. Regulations on the production, importation, and labeling of genetically modified organisms have been drafted by the Polish Government. However, their announcement, scheduled for January 1, 1999, has been delayed. Current regulations and standards for livestock genetics were designed to limit competition from international companies. U.S. livestock genetic companies face particular difficulties meeting requirements for semen concentration and supplying genetics for the top 100 type production index.

GOVERNMENT PROCUREMENT

Poland's Procurement Law came into effect in January 1995 at the national level and in January 1996 at the local level. It is modeled on the UN's procurement code and is based on competition, transparency, and public announcement. The law does not, however, cover purchases by state-owned enterprises. The only single source exceptions in the law to the stated preference of unlimited tender are for reasons of national security or national emergency. The law established a Central Policy Office of Public Procurement which lists all tenders valued at over 20,000 ECU. This office's worldwide web page is available at: http://www.uzp.gov.pl. Poland is an observer to the WTO Committee on Government Procurement.

There are two elements of domestic preference in the Procurement Law. First, there is a 50 percent domestic content requirement for all goods and services provided (for construction, 50 percent of raw materials and labor). In addition, domestic bidders are given a 20 percent price preference. According to implementing regulations, companies with foreign participation organized under the Joint Ventures Act of June 14, 1991, may qualify for domestic status under the Procurement Law. There is an appeals process for tenders viewed as unfairly awarded.

EXPORT SUBSIDIES

Upon accession to the WTO, Poland ratified the Uruguay Round Subsidies Agreement. Poland has eliminated past practices of tax incentives for exports, but it permits the drawback of tariffs on raw material imports from the EU and EFTA countries. Such imports are processed and reexported as finished products within thirty days. For the past several years, WTO consistent export-subsidy quotas for sugar have been fully utilized. Domestic sugar sales are taxed in order to fund these subsidies. In December 1997, the Polish Government approved a new regulation which provides additional subsidies to sugar refineries in order to make sugar exports more competitive and profitable. Most Polish coal, whether sold domestically or aboard, is sold below mining cost. Some state-owned enterprises receive direct and indirect subsidies, such as tax exemption.

In October 1998, in response to growing supplies (partly caused by the collapse of the Russian market) and lower prices for domestically produced pork, the Ministry of Agriculture and Food Economy (MAFE) authorized a subsidy for pork exports. The Ministry of Finance allocated 25 million zlotys (DOLS 7.2 million) for pork export subsidies to be allocated on the basis of tenders announced by the MAFE. By the end of 1998, only 70 tons of pork had been exported under this program.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Since the fall of communism in 1989, Poland has made progress on developing a legal foundation for protecting Intellectual Property Rights (IPR). The U.S.-Poland treaty on business and economic relations (BIT), which contains provisions on IPR protection, went into force in 1994. Poland enacted a copyright law in 1992 and a patent law in 1993. Poland joined the Berne Convention (Paris text, 1971) and the Rome Convention (without article 12). Poland has implemented many of the requirements of the WTO TRIPs (Trade-Related Intellectual Property Rights). A key exception is 50 year protection for previously existing sound recordings. This provision, as well as the all the others required by TRIPs, must be implemented by January 1, 2000, when Poland's exceptions to TRIPs expire.

U.S. companies have complained that Poland's current pipeline and data protection for pharmaceuticals is inadequate. According to U.S. companies, the pipeline provisions of the 1993 patent law, while in accord with the BIT, provide little protection. Another problem is the lack of data exclusivity, which appears to be contrary to TRIPs' requirements. The main beneficiary of these loopholes are Polish state-owned pharmaceutical producers which make cheap copies of patented name-brand medicines.

In 1998, industry sources noted an increase in piracy on the Polish music market. In 1996 and 1997 this market share was approximately 25 percent, however in 1998, pirated sound recordings captured 45 percent of the Polish music market resulting in losses to rights' holders estimated at about $40 million. The vast majority of bootleg recordings came from the former Soviet Union. Losses are further aggravated for U.S. rights' holders by the lack of copyright protection for recordings prior to 1972, which allows Polish companies to produce and sell such recordings without breaking Polish law.

Video piracy also remains a serious problem, with piracy accounting for 25-30 percent of the video cassette market, according to industry sources.. This results in lost sales worth an estimated $25 million annually for U.S. companies, not to mention losses to Polish film producers caused by pirate copies of their first-run films often appearing weeks in advance of the opening.

There have been increased efforts by Polish police and customs to fight piracy. However, industry sources have noted a reluctance on the part of some prosecutors to treat IPR violations as a serious crime.

SERVICES BARRIERS

In the WTO Agreement on Basic Telecommunications Services that went into effect on February 5, 1998, Poland made commitments on all basic telecom services, with a phase-in of some commitments. Domestic long-distance services will be liberalized by the end of 1999 and the Ministry of Posts and Telecommunications hopes to issue two domestic long-distance licenses during the first quarter of 1999. Poland will provide market access and national treatment for all telecommunication related services by 2003. It adopted a reference paper on regulatory commitments. Poland is a signatory nation of the WTO's fourth protocol to the General Agreement on Trade and Services. Poland retains a 49 percent foreign ownership limit for international and domestic long-distance services, including cellular, but this limit has been dropped in a new telecommunications bill that is soon expected to go before the Parliament and may be enacted this year. Poland has also issued a tender for an advisor on the privatization of the state-owned telephone company (TPSA). In October 1998, Poland successfully sold fifteen percent of the company's stock.

Under its OECD Accession Agreement, Poland agreed to allow banks and insurance companies from OECD countries to have branches and representative offices in Poland as of January 1, 1999. Poland bound this commitment in its WTO Financial Services offer and also made market access and national treatment commitments to allow 100 percent foreign-owned insurers, established as joint stock companies, to provide the full range of insurance services (with the exception of pensions). In regard to banking, the National Bank of Poland has not issued any branch bank licenses since it granted two in 1991. Article 44 of Poland's 1992 Association Agreement with the EU provides for national treatment and full rights of establishment for subsidiaries, branches and agencies to EU companies, with a five-year phase-in period (until February 1, 1999), along with a "No New Restrictions" clause. Poland pledged to the OECD that all such liberalization measures would also be extended to all OECD members.

In November 1997, the Polish National Radio and Television Council (KRRITV) adopted a regulation imposing 50 percent European content quotas on all broadcasters, which became effective on January 1, 1998. The language of this Polish decree lacks the flexibility of the EU Broadcast Directive, which provides for content quotas to be applied "where practicable and by appropriate means." Attempts have been made by the KRRITV to enshrine the inflexible quotas in legislation. In addition to the new European content quotas, significant Polish content quotas remain in place.

INVESTMENT BARRIERS

Polish accession to the OECD in 1996 accelerated changes facilitating foreign investment, including national treatment, easing capital flow restrictions, and allowing foreigners to purchase small parcels of land without prior government approval (up to 400 square meters of urban land or one hectare of rural land). Although some foreign businesspeople report that they continue to be disadvantaged in the purchasing of urban land. Polish law permits foreign ownership of up to 100 percent of corporations with a few exceptions described below. Foreign investors may conduct business in the form of limited liability companies or joint stock companies, as stipulated by Poland's commercial law.

Certain controls remain on foreign investment. Despite a recent attempt in the Parliament to raise the limit on foreign ownership in television broadcasting to 49 percent, the limit remains at 33 percent. This restriction prompted a U.S. cable company to abandon its plans for a broadcasting operation in Poland. This move played a role in pushing another U.S. media company to sell its share in a successful new television station. The management of seaports and airports requires a special permit, and foreign stakes in air and maritime transport. Fisheries are capped at 49 percent. The government has tried various ways to encourage higher domestic value-added requirements (e.g. content requirement for the "Special Economic Zones", and licensing requirements for auto assemblers that would have required welding and painting facilities), but these attempts have been stopped by outside pressures, including the United States Government. A proposal has recently be introduced in the

Parliament to limit foreign ownership in the print media to 49 percent, but no action has yet been taken.

Despite the obvious need for investment in the agricultural sector, companies - both U.S. and foreign - receive irregular support from the Polish Government. Several livestock firms which have been willing to invest several hundred million dollars have been stonewalled by Polish officials. In addition, some U.S. companies have complained that they come under unfair scrutiny by Polish tax officials.

ANTICOMPETITIVE PRACTICES

On October 1, 1996, the Office for Competition and Consumer Protection was established out of the former Antimonopoly Office and State Trade Inspection Office. This new office is empowered to fine state-owned monopolies that unduly prevent competition. A 1995 amendment to the Antimonopoly Office Act removed ambiguities regarding this authority, thereby strengthening its ability to act.

ELECTRONIC COMMERCE

In Poland, sales through the Internet are unrestricted. Normal VAT fees apply to merchandise purchases through the Internet. Customs duties and VAT apply to imported software. The Ministry of Finance and Main Customs Office are at the beginning stages of preparing tax regulations for software purchased and delivered via the Internet.

RUSSIA

In 1998, the U.S. trade deficit with Russia was $2.1 billion, an increase of $ 1.1 billion from the 1997 deficit of $1.0 billion. U.S. merchandise exports to Russia were $3.6 billion, an increase of $296 million (9.0 percent) from the level of U.S. exports in 1997. Russia was the United States' 32nd largest export market in 1998. U.S. imports from Russia accounted for approximately $5.7 billion in 1998, an increase of $1.4 billion (33.7 percent) from the 1997 imports. The stock of U.S. foreign direct investment in Russia in 1997 was $1.9 billion, an increase of 42.9 percent from 1996.

The U.S.-Russia Trade Agreement governs all trade relations between the United States and Russia. The USSR signed the agreement in June 1990 and it was approved by the U.S. Congress in November 1991. The agreement, however, never reached ratification during the existence of the USSR, but the United States offered the agreement (with minor technical changes) to each of the emerging states of the former Soviet Union. Russia's parliament approved the agreement, making it possible for the United States to extend Most-Favored-Nation (now Normal-Trading Relations or NTR) status to Russia on June 17,1992. Russia is in the process of negotiating terms of accession to the World Trade Organization (WTO).

IMPORT POLICIES

Imposition of Russian import duties, a 20 percent value-added tax charged on most imported goods (selected food products are exempt or assessed at 10 percent), excise taxes assessed on imported goods (especially automobiles, cigarettes, alcoholic beverages, aircraft) and a burdensome import licensing regime for alcohol combine to depress Russian demand for imports. Frequent and unpredictable changes in Russian customs regulations have created problems for foreign and domestic trade and investment. However, at the end of 1998, the most significant barriers to U.S. exports were the result of the difficult economic situation in Russia subsequent to the August 1998 financial crisis. The steep devaluation of the ruble during the second half of 1998 -- itself a product of the financial crisis -- has produced a concomitant contraction in Russian purchasing power. Other significant negative reverberations in the foreign trading environment include the reduced availability of trade and non-trade finance, disruption to the distribution chain, and chronic payment/clearance problems.

Since 1995, Russian tariffs have generally ranged from five to thirty percent, with a trade-weighted average in the range of 13 to 15 percent. In addition, excise and value-added taxes (VAT) are applied to selected imports. The VAT, which is applied to the price of the import plus its tariff, is currently 20 percent with the exception of some food products. In July 1998, the VAT rose 10 to 20 percent for many agricultural goods. In addition, a temporary three-percentage point tariff surcharge on all goods was enacted in August 1998 as a balance of payment and revenue measure, to be effective from August 15, 1998 until the end of 1999. In 1997 and 1998, new combined customs duties (imposing minimum import tariffs) were introduced on various meat products, processed cheese, bottled water, cassettes, leather goods, wall coverings, apparel, mattresses, and manufactured goods such as audio and video.

Financial sector difficulties and the ruble devaluation in September and October 1998 resulted in a sharp decline of food imports. Russia reacted with the announcement of several measures affecting the import of staple food products and inputs used by the food processing industry. These measures include: a cancellation of the three percent surcharge; a rollback of the vat increase; and cuts in customs duties. Importers from the

United States have experienced delays and unexpected costs due to individual interpretation of Russian customs codes by each port of entry.

Russian tariffs that particularly hinder U.S. exports include those on autos (where combined tariffs and engine displacement-weighted excise duties can raise prices of larger U.S.-made passenger cars and sport utility vehicles by over 70 percent), certain semiconductor products, aircraft and some aircraft components (for which tariffs are set at 30 percent), and wood product (tariffs of 20 percent). A Russian resolution made in July 1998, waives aircraft import tariffs for Russian airlines (contingent on those airlines' purchases of Russian-made aircraft). During the course of 1998, tariff waivers were granted to Aeroflot for purchases of foreign aircraft.

Russia maintains high tariffs and excise taxes on imported spirits. In 1997, Russia instituted an extensive regulatory system for alcohol product import and sale. U.S. exports of distilled spirits consequently dropped from USD 23 million in 1996 to only USD 8 million in 1997. The prices of alcohol licenses and annual import license fees were raised in 1998. The annual import license fees were raised to 30 times higher than the corresponding fees for domestic product licenses. U.S. exporters also complained that the strip stamp requirement, used to show that an excise duty has been paid, has not been applied equally to domestic producers and that excise taxation itself is often discriminatory.

On November 1, 1998, the Russian Government began tightening restrictions on the marketing of alcohol by implementing Resolution 1159. The new regulations envisage a state monopoly on the manufacture and state control of the distribution of alcohol over 27 proof. There are numerous local restrictions on the marketing of alcohol, including the prohibition of sale of hard liquor in open air markets in Moscow. In January 1999, a new law on state regulation of alcohol and alcoholic production was signed by the President. The new law establishes new barriers to trade in this sector, including: (1) imports of alcoholic products (other than wine, cognac and brandy, and beer) are to be limited to 10 percent of annual consumption; and (2) the law establishes extremely onerous conditions for obtaining import licenses. This legislation clearly aimed at protecting the domestic industry. The Russian Government also submitted a new draft law to the Duma that would ban the import of ethyl (pure) alcohol for three years in order to increase government revenues from domestic production and to control the quality of product. Trade officials expect speedy passage of this proposed law.

Import licenses are now also required for color tv’s, sugar, leaf tobacco and tobacco products, combat and sporting weapons, self-defense articles, explosives, military and ciphering equipment, encryption software and related equipment, radioactive materials and waste including uranium, strong poisons and narcotics, and precious metals, alloys and stones. Russia is increasingly resorting to "automatic" licensing regimes in an effort to cut down on smuggled imports that evade payment of customs duties and related taxes.

U.S. poultry exports to Russia, which account for over one-third of total U.S. exports of this product, remain somewhat sensitive. In 1998, the Russian poultry industry informally requested initiation of a safeguard action against imported poultry, under Russia's new trade remedies law. However, by the end of 1998, no formal request had been submitted and therefore no case had been initiated.

In early 1997, the Ministry of Communications circulated a regulation entitled Order No. 8, which limits Russian purchases of foreign-made switchgear. The order is ambiguous and may be withdrawn in the future. Until that time, it threatens to restrict access to the Russian market for this equipment. The order forces the 86 regional companies in the Svyazinvest group to give preference to Russian-made digital switching equipment. There is no technical reason for this requirement.

STANDARDS, TESTING, LABELING AND CERTIFICATION

U.S. companies continue to report that Russian procedures for certifying imported products and equipment are non-transparent, expensive, and beset by redundancies. Russian regulatory bodies generally refuse to accept foreign testing centers' data or certificates. U.S. firms active in Russia have complained of limited opportunity to comment on proposed changes in standards or certification requirements before the changes are implemented, although Russian standards and certifications bodies have begun to work closely with the American Chamber of Commerce in Russia to provide relevant information. Occasional jurisdictional overlap and disputes between different regulatory bodies compound certification problems. In 1998, the Russian Government made operational its inquiry point for regulations covered by the Technical Barriers to Trade (TBT) agreement in the World Trade Organization (WTO). On July 31, 1998, new amendments to Russia's law on certification of products and services went into effect which generally meet requirements of the TBT agreement. The law allows for manufacturer declaration of conformity for a limited number of products. However, this option is not yet available in practice.

The current Russian product certification regime makes it difficult to get products into the Russian market and creates barriers to Russian exports as well. Manufacturers of telecommunications equipment, construction materials and equipment, and oil and gas equipment continue to report serious difficulties in obtaining product approvals. Certification is a particularly costly and prolonged procedure for telecommunications equipment. Telecom equipment is tested for compliance with standards established by both Gosstandart and the State Committee on Communications (Gostelkom). This process typically takes 12-18 months. Self certification by manufacturers is currently not possible. Order 113, introduced by Gostelkom in July 1998, requires all mobile communications systems in Russia to convert to the Russian glonass system by July 1999. This will require costly reconfiguration of systems by U.S. telecommunications companies to maintain access to the Russian market.

Requirements of the Russian Veterinary Department are burdensome and sometimes of questionable scientific or food safety value. As Russia looks to WTO accession, the Veterinary Department will need to develop a more transparent, science-based and WTO-consistent food inspection system. In 1998, biotech food products attracted the attention and increased scrutiny of Russian import authorities. Selected products were required to undergo private-sector-funded government tests in order to maintain necessary certification to remain on the market. Companies were required to fund food safety studies of questionable merit conducted by the Institute of Nutrition in order to receive necessary certification from the Health Ministry. In late 1998, the interministerial government commission responsible for issues related to genetic engineering began to form working groups to examine issues related to biotech including food safety.

Technical level discussions on phytosanitary import requirements for planting seeds have resulted in a positive change in the Russian Government position, making it possible to import U.S. corn and soybean seeds.

Russian agencies have begun requiring use of holographic marks of conformity on a small number of goods and on copies of certification documents. Foreign businesses have complained that the requirement is costly and unnecessary, involves unclear rules, and that Gosstandart has not coordinated sufficiently with the Customs Service.

GOVERNMENT PROCUREMENT

The Russian Government has virtually eliminated the Soviet practice of centralized imports through state-owned foreign trading companies. Some large-scale trade deals for state needs (such as a recent food for natural gas debt deal between Russia and Belarus) still take place. Typically, however, the government awards the right to implement such deals on its behalf to private or quasi-private trading houses.

Russian ministries and government agencies are frequent purchasers of equipment, goods and services for their own needs or for the needs of various domestic organizations or groups (i.e., the military, regional health organizations, or population centers located in remote areas). In April 1997, the government established procedures for public tenders for some government procurement. A government procurement bill, based on competitive bidding, is also being considered in the Duma. Domestic suppliers currently are not accorded many official advantages or privileges in competing for government procurement. Nonetheless, the Russian government's strong political bias toward supporting domestic industries may work in favor of Russian suppliers. An example of such bias occurred in 1997 when government agencies were directed to use only domestic automobiles (a program which ran into problems and is currently not strictly enforced).

On January 13, 1999, an amendment to the Federal Law on Communications went into effect , which appears to vaguely exhort government agencies purchasing communications equipment in efforts to give priority to systems using Russian- produced equipment. The impact on U.S. exports will depend on implementation of the new law; U.S. companies are not currently expecting a large impact.

EXPORT SUBSIDIES

The Russian government's industrial policy guidelines emphasize export promotion and import substitution. In practice, there has been limited budgetary funding for such projects, and the programs that do exist are designed to provide support to industries which export, rather than targeted export subsidies. Russia has no explicit export subsidies on agricultural products.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Estimated losses to U.S. industry due to intellectual property piracy exceeded one billion dollars in 1998, according to industry sources. During the summer of 1998, the U.S. motion picture industry estimates that video piracy in Russia rose by 20-30 percent to approximately 80 percent, in the aftermath of the financial crisis.

With the exception of retroactive protection of copyrights, the Russian Government has made considerable progress in constructing a legal framework to bring Russia up to world standards in the area of intellectual property protection. Since 1992, Russia has enacted generally acceptable laws on trademarks and appellations of origins, patents, and protection of semiconductor chips, computer software, and copyrights. Russia is a member of the Paris Convention, the Universal Copyright Convention and other major multilateral intellectual property conventions. In 1995, Russia acceded to the Berne and Geneva Conventions. The U.S.-Russia bilateral trade agreement also requires Russia to provide protection for intellectual property. Russia is in the process of joining the WTO, and as a new member will be required to meet obligations under the WTO's Trade Related Aspects of Intellectual Property Rights (TRIPs) immediately upon accession.

U.S. industry remains very concerned by the lack of effective anti-piracy action by Russian law enforcement agencies. Strengthened criminal penalties for IPR infringement went into effect January 1, 1997. But, while the Russian Government has begun to pay more attention to enforcement, there are still disappointingly few cases in which these penalties have been applied. As the estimated losses attest, piracy of U.S. video cassettes, films, music recordings, books, and computer software is extensive in Russia. Some U.S. companies have had difficulty registering well-known marks. Administrative and judicial review bodies are only beginning to become active in IPR protection. The U.S. industry believes that at the prosecutorial and judicial levels, officials often do not consider copyright infringements to be serious offenses and thus do not issue appropriate levels of penalties.

U.S. investors also consider the Russian court system to be unprepared to handle sophisticated patent cases. However, a higher patent chamber has been established at the Russian Patent and Trademark Agency which should bring greater expertise and efficiency to resolution of trademark and patent disputes.. The U.S.-Russia bilateral trade agreement calls for a side letter on mutually acceptable provisions on compulsory licensing. The text of a letter was agreed upon in September 1997, however the Russian Government has not signed the side letter.

SERVICES BARRIERS

Discrimination against foreign providers of non-financial services are not so much the result of federal law, as abuse of power, sub-national regulations, and practices that may even violate Russian law. For example, foreign providers of services have sometimes noted discrimination in obtaining licenses from local authorities and often pay fees many times more than those paid by domestic companies.

The federal law on "Banks and Banking Activity of 1996" permits foreign banks to establish branches or subsidiaries in Russia. The law allows the Central Bank to impose a ceiling on the total amount of foreign bank capital as a percentage of the total bank capital in Russia. Foreign banks' share of the total capital is around 4 percent, well below the current 12 percent ceiling. In May 1997, the CBR announced new regulations requiring foreign banks to have a minimum of ECU10 million (about USD 11.5 million) in capital and to have at least 75 percent of its employees and 50 percent of its management board of Russian nationality. Heads of Russian offices in foreign banks are required to be proficient in the Russian language. In early 1998, the Russian Government enacted insurance law amendments which will prevent foreign-licensed insurers from insuring the property of Russian companies and individuals. Foreign insurers are now limited to re-insurance and mutual insurance for Russian companies. Foreign firms can hold 49 percent stakes in joint ventures with Russian insurers. However, a draft bill pending in the legislature seeks to impose a 15 percent cap on foreign ownership in this sector, as a whole. In 1998, firms with foreign capital encountered difficulties in offering travel insurance coverage.

In October 1998, the President vetoed draft Russian legislation that would have limited market access for foreign investors in the tourism sector. However, supporters of the bill may try to override the veto or to redraft parts of the bill in order to gain government support.

New tax regulations went into effect January 13, 1999, that provide tax breaks to the Russian film industry until January 1, 2001. Contracts for production, printing and showing of Russian movies (which include the sale of copyrights) will be exempt from the 20 percent value added tax. To qualify as Russian movies, a film must be produced and directed by Russian citizens/companies, have foreign investment of no more than 30 percent and use a crew made up of no more than 30 percent foreign nationals. Fifty percent of the budget must be spent in Russia, and the film must use the Russian language or another language spoken in the Russian Federation. Investments in film production, distribution, and the construction and refurbishment of movie theaters, will be exempt from the profit tax. According to press reports, the draft 1999 budget also allocates 264 million rubles (about USD 12 million) for direct support to the film industry.

INVESTMENT BARRIERS

A Bilateral Investment Treaty (BIT) was signed between the United States and Russia in June 1992. The treaty was approved by the U.S. Senate in October of the same year, but it will not enter into force until approved by the Russian Duma.

Foreign investors in Russia have indicated their greatest concern is the legal system, particularly shareholders' rights and weak contract law. Some court decisions that favor western investor have not been implemented. In addition, as projects generally require federal, regional and local approval, the vagueness of existing laws causes different interpretations and conflicting requirements at the different levels. In 1997, the Prime Minister created an Interministerial Commission on Shareholders Rights to improve government coordination in dealing with investment disputes.

Failure to pass a federal land code that allows purchase and sale of real property has posed problems for investors in some regions of Russia. This controversial bill has been stymied for five years by the Duma's objections to private ownership, buying and selling of farmland, and fears that land holdings will be concentrated in a small number of hands. Despite many hopes, the latest version of the law was rejected by the Duma, on December 23, 1998. The Duma must now redraft the legislation and pass it through three readings. Some regions are moving to allow land ownership and sale within their own borders, including Saratov, Samara and the city of Moscow. These local developments may mitigate the problems related to real estate holdings for foreign investors.

Economic disincentives are also a key concern foreign investors, particularly with regard to the Russian tax system. Under Present legislation in Russia, businesses rather than individuals carry the brunt of the tax burden. Russia's draft tax code attempts to address this and other problems; if passed in full, it should simplify the tax system and in some cases reduce the overall tax burden on businesses operating in Russia. Part I of the tax code was passed in July 1998; the legislature is currently considering part II, which will define the rates for specific taxes. Crime and corruption in commercial transactions and problems with the implementation of customs regulations also inhibit investment.

In December 1998, the Russian Duma passed the long-awaited amendments to the Production Sharing Agreement Law. The amendments were signed into law on January 8. These bills are considered necessary prerequisites to large-scale investment in the Russian oil and gas sectors, although conditions in the world oil market may limit the amount of new investment in the near term. The new legislation increases the local-content requirement for equipment to 70 percent and requires 80 percent local labor. There is no reference to the period in which these targets must be achieved, and U.S. companies believe they will be workable provided that subsequent regulations are written in an appropriately flexible way by the Government of Russia.

Regarding purely financial disincentives, most foreign investors cite concerns about profit repatriation. This is especially true with regard to ongoing negotiations to restructure Russia's domestic debt, after a default in August 1998 brought on by the financial crisis. Although Russia assumed obligations under article VIII of its IMF Treaty to permit the free flow of capital, the Central Bank has gradually been imposing increasing controls on capital flows. Such measures include increasing the percentage of export proceeds which must be repatriated (from 50 to 75 percent) and decreasing the time for repatriation (from 14 to 7 days). The Central Bank has also instituted dual foreign currency trading sessions, with a special session in the morning for importers and an afternoon session for "speculators." There has been some divergence in exchange rates between the two sessions.

For those investors interested in exporting their product overseas, temporary export taxes adopted in January 1999, as revenue measures designed to capture a portion of the windfall profits from the devaluation of the ruble, may also act as a disincentive. Ten percent export tariffs are levied on the export of scrap from seven metals - copper, nickel, aluminum, lead, zinc, cobalt and titanium - as well as sunflower seeds, rapeseed, soybeans, raw hides and tanned leather, and certain logs (oak, beech, ash). A five percent export tax will be levied on natural gas, refined copper and copper products, nickel ore, nickel and nickel products and fuel oil. The government is also considering a five percent export tax on crude oil exports. The fact that Russia collects VAT on exports at the point of sale in Russia means that these Russian-sourced exports to other countries which collect VAT from the final customer are burdened with a double VAT tax burden.

In July 1998, the President vetoed a bill containing amendments to the Russian Law on Foreign Investments. The bill included provisions creating incentives for large projects (which meet certain criteria such as export orientation or import substitution) and has registration requirements for foreign direct investments. The Duma has formed a reconciliation committee to try to rework the law to respond to the President's concerns. In addition, the government is considering proposals to provide tax incentives to large investors.

A Presidential decree signed in early 1998 provides investment incentives for large investments in the auto industry that meet local content requirements. Although the decree is technically still in place, its implementation has been on hold since the onset of the economic crisis. Resolution 1235 of October 1998 allows companies to postpone payment of customs duties and related taxes for up to two years, for products withdrawn from customs warehouses by December 31, 1998. There are no discriminatory aspects to this temporary crisis-relief measure, but these tax benefits may be considered a subsidy under World Trade Organization rules if the beneficiaries export their products.

Aircraft

Russian tariffs on imported aircraft were raised from 15 to 50 percent in March 1994, and then lowered to the still prohibitive level of 30 percent in 1995. On January 30, 1996, Vice President Gore and Russian Prime Minister Chernomyrdin concluded a joint Memorandum of Understanding (MOU) that addresses U.S. concerns about barriers to the Russian civil aircraft market and the application of international trade rules to the Russian aircraft sector. The MOU states that U.S. aircraft manufacturers will be able to participate in the Russian market and share in its growth. The MOU also makes clear that the Russian aircraft industry will in time be fully integrated into the international economy. Russia pledged to undertake the same international trade principles as the United States and many others.

In the interim before Russia accepts its full international trade obligations, the MOU commits Russia to take steps, such as the granting of tariff waivers, to enable Russian airlines to meet their needs for non-Russian aircraft on a non-discriminatory basis. On July 7, 1998, the Russian Government issued Resolution 716 which requires Russian airlines to commit to the purchase or lease of Russian made aircraft in order to receive duty reductions and exemptions for foreign aircraft acquisitions. During the course of 1998, tariff waivers were granted to Aeroflot for purchases of foreign aircraft under these conditions.

On January 8, 1998, a federal law on state regulation of the development of aviation was signed. The law stipulates preferential treatment (tax holidays, guarantees on investment) for Russian and foreign investors in aviation-related research and manufacturing ventures. The law limits the share of foreign capital in aviation enterprises to less than 25 percent and requires that board members and senior management staff be Russian citizens.

ELECTRONIC COMMERCE

The Civil Code of the Russian Federation explicitly allows electronic commerce as a form of transaction. According to Russian industry sources, the key legal obstacle is the absence of a government body to provide licenses to electronic commerce businesses that would allow them to issue digital certificates for protection of on-line payments using credit cards. Russian companies hope to convince the State Committee on Communications to accept the role of a licensing body to certify authorities. In the interim, e-commerce transactions are either prepaid or involve payment upon delivery of the goods.

SINGAPORE

In 1998, the U.S. trade deficit with Singapore was $2.7 billion, an increase of $344 million from the U.S. trade deficit of $2.3 billion in 1997. U.S. merchandise exports to Singapore were $15.7 billion, a decrease of $2.1 billion (11.6 percent) from the level of U.S. exports to Singapore in 1997. Singapore was the United States' 10th largest export market in 1998. U.S. imports from Singapore were $18.4 billion in 1998, a decrease of $1.7 billion (8.5 percent) from the level of imports in 1997. The stock of U.S. foreign direct investment (FDI) in Singapore at the end of 1997 was U.S. $ 17.5 billion, an increase of 24.9 percent from the level a year earlier. U.S. FDI in Singapore is concentrated largely in manufacturing (notably electronics, industrial chemicals and petroleum) and the financial sectors.

IMPORT POLICIES

Tariffs

Singapore imposes tariffs on only four categories of imported goods -- tobacco products, alcoholic beverages, automobiles, and gasoline -- for public policy and environmental reasons. Approximately 99 percent of Singapore's imports are not dutiable. During the Uruguay Round of multilateral trade negotiations, Singapore agreed to bind 70 percent of its tariff lines (up from 1 percent), compared to the United States, which has bound 98 percent of its tariff lines. The Uruguay Round Agreements entered into force on January 1, 1995. As an APEC participant, Singapore has also committed to eliminating all tariffs by 2010 (consistent with the agreed time frame for "developed economies") and to bind these commitments at the World Trade Organization (WTO).

GOVERNMENT PROCUREMENT

Singapore initiated negotiations to join the WTO Government Procurement Agreement (GPA) in December 1995, and deposited its instrument of accession to the GPA on September 20, 1997. This instrument of accession entered into force for Singapore on October 20, 1997.

EXPORT SUBSIDIES

The Government of Singapore maintains three export promotion schemes, available to both local and foreign firms, which are consistent with the World Trade Organization (WTO) disciplines governing subsidies; these are: the International Trade Incentives Program, the Double Taxation Deduction, and the Production for Export Schemes. Singapore has committed to phase out these programs by 2003, and has accepted no applications since 1997 for the production for export scheme. The Government does not employ multiple exchange rates, preferential financing scheme, import-cost-reduction measures or other trade-distorting policy tools.

LACK OF INTELLECTUAL PROPERTY PROTECTION

The Singapore Government continues to take steps to improve levels of intellectual property rights (IPR) protection and enforcement, especially in connection with its goal of seeking foreign investment and promoting technology and information-based sectors of the economy. Piracy rates in Singapore are the lowest in Asia, however the piracy of copyrighted works -- especially those fixed on optical disks (music CDs, VCDs, and CD-ROMs) -- increased at unacceptable rates over the past several few years. Accordingly, Singapore remains on the Special 301 Watch List.

Singapore

Singapore is a member of the World Intellectual Property Organization (WIPO). Singapore acceded to the Berne Convention in September 1998, but is not a party to the Universal Copyright Convention. As a member of the World Trade Organization (WTO), Singapore is obligated to implement the Agreement on Trade-Related Intellectual Property Rights (TRIPs), but delayed implementation of those obligations by availing itself of the transition period available to developing country members. However, Singapore has made early implementation of TRIPs a priority and has stated that its IPR regime will be fully TRIPs compliant upon entry into force of laws governing trademarks, geographical indications, and layout designs of integrated circuits (expected by mid-1999).

In 1987, following close consultation with the U.S. Government, Singapore enacted strict, comprehensive copyright legislation which relaxed the burden of proof for copyright owners pressing charges, strengthened civil and criminal penalties and made unauthorized possession of copyrighted material an offense in certain cases. In 1994, Singapore enacted a new Patents Act. Amendments making the patent law fully TRIPS-consistent came into effect in January 1996.

Since the mid-1990s, copyright piracy rates have continued to climb, in part because of the inadequacy of the current "self-help" system whereby private IPR owners are expected to police the marketplace for infringement of their rights, collect evidence of infringement, obtain warrants to perform searches and seizures, etc. Singapore law enforcement authorities in the past have been unwilling to initiate independent enforcement actions. However, 1998 witnessed a number of developments intended to address commercial-scale piracy in Singapore and further strengthen levels of IPR protection. Singapore has enacted amendments to its copyright law (January 1998) and amended the trademark law (November 1998) with the intent of making both TRIPS-consistent.

Singapore imposed new licensing requirements and import controls on the local optical disk (OD) manufacturing industry in April 1998. It also orchestrated the creation of "code of conduct" for OD manufacturers, although the elements in the code of conduct are voluntary and not legally enforceable. Singapore also dramatically increased the number and scope of police-initiated raids, resulting in the arrest of local syndicate leaders and the seizure of nearly 750,000 illegal optical disks in two major operations in August and October 1998. Nevertheless, the retail availability of pirated CDs, VCDs and CD-ROMs continue to be a problem. Singapore authorities believe that a major proportion of retail piracy is the result of imported goods; however not made border enforcement of intellectual property rights a priority. IPR associations also urge the Government to create an independent IPR enforcement police force, apart from the existing IPR warrant unit, and for the enactment of even stronger laws and regulations to protect IPR, including the mandatory use of source identification (SID) codes. Other outstanding issues include the lack of rental rights for sound recordings and software, inadequate protection against making bootleg copies of musical performances, the limited scope of copyright protection for cinematographical works and overly broad exceptions from copyright protection. The Government, however, has drafted additional amendments to the copyright law which could address these issues.

Recent industry estimates indicated software piracy losses in Singapore of U.S. $56.6 million in 1998, about the same level as in 1996, but up from U.S. $40.4 million in 1995 and U.S. $37.3 million in 1994. Singapore's piracy rate was estimated to have declined to 56 percent in 1997, from 59 percent in 1996, compared to 53 percent in 1995 and 61 percent in 1994. In the area of music CDs, it is estimated that piracy rose sharply from 12 percent in 1994 to nearly 30 percent in early 1997, but declined to an estimated 19 percent in 1998.

SERVICES BARRIERS

Basic Telecommunications

Singapore's telecommunications industry has been steadily liberalized since 1989, although the Government still imposes limits on the number of telephone service providers in the country. Restrictions on the sale of telecommunication consumer goods and the provision of value-added network services (VANS) have been lifted. Singapore Telecom (SingTel) has been privatized, and its regulatory functions assumed by the Telecom Authority of Singapore (TAS). The Government ended SingTel's monopoly in April 1996 when TAS awarded a license to a second cellular phone service provider (a foreign-Singapore joint venture) and three new paging service providers.

Singapore has committed to all regulatory principles in the WTO Basic Telecom Agreement reference paper. It made comprehensive market access commitments in basic services but excluded resale via leased lines connected to the public switched network, for domestic and international services. Foreign equity limits were liberalized to allow foreign stakes of up to 49 percent for direct, and 73.99 percent for indirect, investment. In line with its WTO commitments, the TAS issued a license to a new joint venture basic telephone service provider ("Starhub") in April 1998, to begin operation in April 2000. At the same time, it issued a third cellular phone service provider license to a foreign joint venture company. TAS has announced that it will eliminate all numerical quotas on telecom service providers, and consider issuing additional basic telephone service licenses, in 2002.

Legal Services

At present, foreign law firms may set up offices in Singapore to advise clients only on the laws of their home country or international law. No foreign university law degrees, with the exception of some British universities, are recognized for the purpose of admission to practice law in Singapore. Foreign law firms are also not permitted to hire or form partnerships with Singaporean lawyers to practice local law in Singapore, although they may enter into operational agreements with local firms on a project by project basis.

In 1998, however, the Singapore Law Society approved a partnership arrangement between a major U.S. law firm and a local law firm. Moreover, a Government-appointed committee chaired by the Attorney General is soon expected to issue a report recommending that restrictions on foreign access to the legal services sector be relaxed, especially in the area of local banking and corporate law. This measure would be intended to enhance Singapore as an international financial and business center. There are currently more than 60 foreign law firms practicing in Singapore.

Engineering and Architectural Services

Singapore amended its laws in April 1995 to allow engineering firms to be 100 percent foreign-owned. However, the chairman and two-thirds of the board of directors must comprise engineers, architects, or land surveyors registered with local professional bodies. Professional engineering work in Singapore must be under the control and management of a director of the corporation who is a registered owner of at least one share of the corporation, who is a registered professional engineer ordinarily resident in Singapore and who has a valid practicing certificate. In the case of a partnership, only registered engineers may have a beneficial interest in the capital assets and profits of the firm, and the business of the partnership must be under the control and management of a registered professional engineer who ordinarily resides in Singapore. Similar requirements apply to architectural firms.

Accounting and Tax Services

Public accountants and at least one of the partners of an accounting firm must be effectively reside in Singapore. Only public accountants registered with the Public Accountants Board of Singapore can practice as tax consultants.

Insurance

Singapore has determined that the local insurance market is saturated. As a result, no new licenses for foreign or domestic firms seeking access to Singapore's insurance market had been issued for several years up to 1995. In 1996 and 1997, however, new licenses were issued to two foreign-invested companies which fulfilled a perceived market need in the area of specialized financial guarantee insurance.

The Monetary Authority of Singapore (MAS), the country's central bank, currently limits foreign equity stake in domestic insurance companies to less than 50 percent. The existing branch operations of foreign firms and outstanding foreign stakes in domestic firms above the 49 percent limit are protected, however, under Singapore's WTO financial services offer. Reinsurance licenses, allowing companies to tap the regional market from Singapore, are freely available to new entrants. Captive insurance licenses are also available to subsidiaries of multinational companies to underwrite their own risks.

Banking and Securities

The MAS has not issued new licenses for local retail banking over the past two decades to either foreign or domestic institutions because it considers Singapore’s banking sector to be saturated. As it stands, foreign penetration of the banking system in Singapore is comparatively high, with foreign banks currently holding 22 of the 34 full (local retail) banking licenses. They account for almost half of all nonbank deposits from residents, more than half of all nonbank loans to residents, 70 percent of total trade financing business in Singapore, and 60 percent of banking profits.

However, Singapore does impose some restrictions on full-licensed foreign banks that restrict their market access in retail banking. Unlike local banks, foreign banks cannot open new branches, freely relocate existing branches nor operate off-premise automated teller machines (ATMs), although they are permitted to install electronic terminals at their corporate clients' premises as well as provide home banking services through telephone and personal computers. In addition, foreign equity share in full-licensed domestic banks are restricted to an aggregate 40 percent. The MAS, however, continues to encourage the growth of the offshore banking industry and the Asian dollar market in Singapore, in which U.S. and other foreign banks have a substantial presence. The lending limit for offshore banks to Singapore-based firms was recently raised from S$200 million to S$300 million.

In the securities area, foreign brokerages generally have the same right to establish and offer financial products as do domestic firms with respect to government securities, unit trusts and financial futures. There are restrictions, however, on the extent to which foreign stockbroking firms can trade in the equity securities markets for Singapore resident clients. Current stock exchange regulations restrict foreign equity ownership of exchange member companies to 49 percent, with the exception of two joint ventures approved prior to 1990 and the special category of "international members" which are wholly foreign-owned stockbroking companies in the Stock Exchange of Singapore (SES). While authorized to trade for non-resident clients, these SES international members (currently numbering six) are permitted to trade Singapore Dollar denominated securities for resident clients only if the transaction value per contract is S$5 million or above. SES international members also may not vote in an election of members to the SES board of directors.

In 1995, the SES created a category of "approved foreign brokers" (AFB) who are permitted to trade only non-Singapore Dollar denominated stocks on the exchange. All other foreign stockbroking firms licensed in Singapore (SES "non-member companies") must trade local securities through SES members. Ongoing reforms in the financial services sector are expected eventually to permit foreign majority ownership of local SES member companies as well as phase out the AFB category in order to erase the distinction between Singapore and non-Singapore Dollar denominated stocks.

ELECTRONIC COMMERCE

There are no significant barriers hindering the development and use of electronic commerce (e-commerce) in Singapore. To the contrary, the Government is actively promoting e-commerce, launching a national master plan in 1998 to transform Singapore into an e-commerce hub in Asia. The Electronic Transaction Act, which came into force in July 1998, provides the legal foundation for e-commerce transactions. In terms of infrastructure, “Singapore One” -- which will connect homes, schools, offices and libraries in a nationwide broad bandwidth and high speed Internet network -- is scheduled to be in place by the end of 1999. The Government expects the Singapore One network to facilitate the widespread use of e-commerce in the country. Singapore is also actively working to harmonize cross-border e-commerce laws, policies and infrastructure with other countries bilaterally and through international fora like APEC. U.S. multinational corporations, have recently established e-commerce centers in Singapore.

OTHER BARRIERS

Singapore is well-regarded for its strong stand and track record against corruption in government and business. In international surveys, Singapore is regularly identified as among those countries with the lowest levels of corruption. When cases of corruption are uncovered, the authorities deal with them strictly, swiftly and publicly. The Prevention of Corruption Act and the Corruption (Confiscation of Benefits) Act provide the legal basis for government action by the Corrupt Practices Investigation Bureau (CPIB), a division that operates directly under the Prime Minister's office. These laws cover acts of corruption by citizens of Singapore at home and abroad.

SOUTH AFRICA

In 1998, the U.S. trade surplus with South Africa was $571 million, an increase of $71 million from the U.S. trade surplus of $500 million in 1997. U.S. merchandise exports to South Africa were $3.6 billion, an increase of $626 million (20.8 percent) from the level of U.S. exports to South Africa in 1997. South Africa was the United States' 31st largest export market in 1998. U.S. imports from South Africa were $3.1 billion in 1998, an increase of $555 million (22.2 percent) from the level of imports in 1997. The stock of U.S. foreign direct investment (FDI) in South Africa at the end of 1997 was $2.3 billion, an increase of 57.7 percent from the level a year earlier. U.S. FDI in South Africa is concentrated largely in manufacturing (notably electronics, industrial chemicals and petroleum) and the financial sectors.

IMPORT POLICIES

South Africa’s Import and Export Control Act of 1963 authorizes the Minister of Trade and Industry to act in the national interest to prohibit, ration, or otherwise regulate imports for, inter alia, health, environmental, or security reasons and to ensure minimum quality specifications. In recent years, the list of restricted goods requiring import permits has been substantially reduced, reflecting the Department of Trade and Industry’s (DTI) policy not to protect local industries by means of non tariff barriers. Among the products still requiring import permits are fish and fish products, used goods, scrap, waste, ashes, residues, petroleum products, ozone-depleting chemicals, firearms and ammunition, gambling equipment, and radioactive chemical elements. DTI says it will phase out import permits over time in favor of tariffs. DTI is developing a system to issue permits electronically and to link DTI with customs and with persons applying for permits to facilitate the customs application and clearing process. Import permits must be obtained from the Director of Imports and Exports before the date of shipment.

While working toward eliminating import permits in accord with WTO regulations, the South African Government has also simplified its tariff structure and reduced tariffs across many product lines. South Africa, however, has recently raised tariffs on certain agricultural products in order to protect local producers. The following agricultural goods are affected:

Wine: As of January 1, 1998, duties on imported wines are 25 percent FOB. DTI argues that this increase was part of South Africa’s efforts to replace import permits with tariffs.

Wheat and Corn: DTI reinstitituted a tariff designed to rise in accordance with a drop in the international grain prices. At current international prices, the tariff on corn is approximately $4.36 a ton; wheat is tariff free.

Poultry: Despite strenuous lobbying by the U.S. Government, the Board of Trade and Tariffs (BTT) raised tariffs on imported frozen chicken parts from a 27 percent flat rate to 2.2 rand per kilo. For a time, importers circumvented this high tariff by bringing in “seasoned” parts that could be imported at the 27 percent rate. This loophole was closed in 1998, and all frozen chicken parts carry the higher (effectively 64 percent) rate. BTT took this action in response to pressure from one large South African chicken producer, which is a part of a corporate conglomerate.

Irradiated meat: Because of a Ministry of Agriculture determination that not enough information exists regarding the safety of irradiated meat and other irradiated food products, importing such goods into South Africa is prohibited.

South Africa

South Africa reduced the tariff on instant-print cameras from 6 percent to 0 percent on June 28, 1996. However, instant-print cameras and instant-print film continue to be classified as "luxury items" and remain subject to an excise tax of 15 percent. Although these excise taxes are nondiscriminatory, U.S. producers maintain that no domestic producers exist, and the high taxes are being circumvented by illegal importers.

Any South African producer may petition the BTT for tariff protection. Approval of such petitions is granted if the producer has a major share of the domestic market and can prove that foreign competitors are challenging its market dominance. If no application passes an initial assessment, the government begins a consultation process. Although public comment on tariff -protection requests is normally open for a 6-week period, South Africa introduced a 3-week public comment provision for emergency situations. After the consultations, the government investigates the matter further and then issues a decision. The government may deliberate for an undefined period before rendering a decision.

South Africa, complying with its WTO commitments, has worked to reform a complex tariff structure. In the past few years, South Africa has simplified and reduced its overall tariff rate from more than 20 percent to 10 percent. Nevertheless, many industries previously protected by nontariff barriers have tried to increase industry tariffs to WTO-bound levels. DTI and BTT, however, refused most of these tariff increase applications.

Between 1992 and 1994, South Africa increased tariffs on paperboard and paper products, certain steel products, and cosmetics. South Africa instituted a general phased reduction of tariffs on paper and paperboard in 1995 that will bring most tariffs down to 10 percent ad valorem by 2000 and to 5 percent ad valorem by 2005. Both DTI and BTT have introduced rebate provisions for many categories of paper and paperboard, and authorized full duty rebates on imports of uncoated and coated kraft paper and paperboard, coated paper and paperboard, and tarred, bituminized or asphalted paper and paperboard. Because of the complex nature of the tariff headings and rebate provisions of the paper and paperboard industry, the Government of South Africa requested that numerical tariff headings be provided to facilitate inquiries about these industries.

Although DTI maintains that no tariff increases have resulted from its tariff rationalization process since 1994, several U.S. exporters have complained of increased tariff rates on their products as a result of reclassification or misclassification into a higher tariff category. One such instance involves the misclassification of photographic film in plates into the tariff heading of photographic film in coils, which carries a significantly higher tariff rate.

DTI has instituted an export promotion scheme specifically for the textile industry whereby an exporter is permitted to import duty free an amount of raw material equivalent to 30 percent of its exports. A similar scheme exists for the automobile industry. These export subsidy schemes essentially subsidize exports via indirect, export based rebates rather than direct subsidies.

As a result of market-access commitments made in the Uruguay Round and DTI's attempts to reform its tariff structure, South Africa is committed to:

– rationalize 9.580 tariff lines down to 7,182.
– bind 98 percent of its tariff lines to WTO binding levels, up from 16 percent bound prior to 1994.
– replace all remaining quantitative controls with ad valorem duties and make formula duties WTO consistent.
– cut back tariff lines from the past 80 different levels into eight levels ranging from 0 to 30 percent with a

few exceptions. These tariff lines will comply with the WTO binding levels over 7 years (ending in 2002) instead of the 12 years negotiated under the WTO, and maximum tariff levels in several categories will fail to levels below WTO binding levels.

According to the DTI/BTT plan, South African tariffs in textiles will fall to the following five levels:

PRODUCT	SA PLAN (percent)	WTO BINDING LEVEL (percent)
Clothing	40	45
Made-up textiles	30	30
Fabrics	22	25
Yarn	15	17.5
Fibers	7.5	10

Customs Procedures

In accordance with the WTO customs valuation agreement, customs valuation is based on the FOB price in the country of export or the transaction value, that is the actual price paid or payable. If the transaction value cannot be ascertained, the actual price paid for similar goods, or a computed value may be used based on production cost of imported goods.

In 1997, South African Customs was placed under the South African Revenue Service (SARS) and the position of Commissioner of Customs was eliminated. The U.S. Customs agent in South Africa reports that the SARS investigators review papers and accounting records in tracing funds to detect illegal activities. In the last nine months, the Customs inspectors have increased the number of physical searches of passengers and cargo with positive results. SARS personnel are concerned with collecting revenue and see that enforcing customs regulations may also increase revenue as well as compliance.

Some South African land points of entry have been closed to commercial traffic to allow the Customs officials to increase control and examinations at the remaining posts. As a result, some Customs agents have been redeployed, but there is still a shortage of Customs officials. A border unit of the South African police was established in April 1997. The unit is responsible for security and enforcement at South African ports of entry and works closely with South African Customs.

GOVERNMENT PROCUREMENT

Government procurement is regulated by the State Tender Board and Provincial Tender Boards. Parastatals funded by the government generally follow government policy on procurement. A proposal exists to rationalize the many provincial and parastatal tender boards into one national tender board.

Preferences exist to promote local manufacture and are based on level of local content, use of the SABS mark, and use of locally manufactured electronic systems and components. In addition, the National Industrial Participation Programme provides for an industrial participation in all state and parastatal contracts valued at US$10 million or more. Under the program, the seller must invest at lease 30 percent of the value of the imported content in a new or incremental business in South Africa. In the case of defense bids, the figure increases to 50 percent. The South African Defense Forces (SADF) modernization program has selected preferred bidders from Italy, Germany, the UK, and Sweden for modernizing certain SADF equipment. All of the tenders have significant offset components as required by the bidding terms.

EXPORT SUBSIDIES

South Africa has focused on means other than direct subsidies for promoting South African exports. Export Marketing Assistance (EMA) offers financial assistance for the developing new export markets through financing of trade missions and market research. An export finance guarantee for small exporters promotes small and medium sized enterprises.

For a limited period, existing nondiscriminatory tax allowances such as the Income Tax Act for machinery and buildings used in a manufacturing process will be granted on an accelerated basis. If any new or unused plant or machinery is acquired and used for manufacturing by a taxpayer between July 1, 1996, and September 30, 1999, the cost can be written off over 3 years. A similar allowance is also granted to a lessor of manufacturing plants and machinery. Similarly, a 10-year write-off is available for erecting any building, or any improvements to a building for manufacturing during July 1, 1996, to September 30, 1999, and used before March 31, 2000. Finally, a tax holiday scheme provides for up to 6 years of tax-free status for incipient or "greenfield" investments that qualify in "specified manufacturing concerns," satisfy a "labor intensity" formula, and promote development in an underdeveloped geographic location. For each component, the qualifying company will receive two years of continuous tax-free status. The tax holiday scheme is available to all qualifying foreign or domestic investors. Other subsidies include electricity and transport rebates for businesses located in designated development corridors.

LACK OF INTELLECTUAL PROPERTY PROTECTION

To improve its enforcement of intellectual property rights (IPR), South Africa, which is regarded as a developed country in terms of its IPR obligations in the WTO, has been improving its legislation and enforcement techniques for IPR violations. Two IPR-related laws were passed on September 9, 1997: the Intellectual Property Laws Amendment Act and the Counterfeit Goods Act. The former amends the 1978 Patent Act, 1993 Trademarks Act, and the 1993 Designs Act, among others, to address South Africa's obligations under TRIPs. The latter law provides for criminal prosecution of persons trading in counterfeit or pirated goods and establishes a special anti-piracy unit. However, the South African police are currently so overwhelmed with illegal activities that enforcing these laws on a consistent basis has proved difficult. One U.S. firm estimates that pirated software comprises approximately 50 percent of the local market and similar estimates are made for pirated recorded music and videos.

South Africa amended its Medicines Act in December 1997. The new law appears to empower the Minister of Health to abrogate patent rights for pharmaceuticals. It also would permit parallel imports. Implementation of the law has been suspended pending the resolution of a constitutional challenge in the South African courts. Undisclosed data also is not adequately protected under South African law. The need to provide such protection quickly is demonstrated by the approval in South Africa of a generic copy of a medicine which still has undisclosed data protected from competitors' use in many countries. Largely as a result of these concerns, South Africa was placed on the Special 301 Watch List in 1998.

SERVICES BARRIERS

South Africa made commitments on most of the basic telecommunications services in the WTO negotiations. It adopted the reference paper on regulatory commitments. Although South Africa offered to end its monopoly of long-distance, data, telex, fax and privately leased circuits services as of 2004, it committed to guarantee only one additional operator in these areas at that time. The South African Department of Communications announced that Telkom SA's exclusivity for fixed wired telephony will end in 2002. The exclusivity period may be extended to 2003 if Telkom meets its roll out target although the extension is not guaranteed. Due to Telkom's monopoly, voice data transmission is not a permissible service for VANS operations. Telkom is also challenging in court the right of call-back providers to operate in South Africa, claiming such service violates it exclusivity in international service. South Africa will make commitments within one year of adopting legislation on satellite-based services.

In the WTO financial services negotiations, South Africa submitted a proposal for increased access to its market. However, to operate as a branch, a foreign bank will be required to capitalize its local operation by the greater of 8 percent of risk-weighted assets and other contingent liabilities or 50 million rand.

INVESTMENT BARRIERS

South Africa has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content requirements in the automotive, telecommunications, equipment, tea and coffee sectors. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. South Africa, as a developing country for investment issues, must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

Vice President Gore and South African Deputy President Mbeki signed an income tax treaty on February 17, 1997, in Cape Town. It was then ratified by each country and entered into force on January 1, 1998. The treaty, designed to increase cross-border flows of capital, trade, and technology between the United States and South Africa, should remove certain existing tax disincentives to investment in South Africa. The treaty accomplishes these objectives by reducing tax rates on certain cross-border income flows, increasing investor confidence through protection against nondiscriminatory taxation, and providing for a dispute-resolution mechanism.

On February 18, 1999, in a ceremony in Cape Town presided by Vice President Gore and Deputy President Mbeki, the United States and South Africa signed a Trade and Investment Framework Agreement (TIFA). The TIFA, the first ever negotiated with a country in sub-Saharan Africa, establishes the terms of reference for a structured dialogue on trade, intellectual property, and investment issues between the United States and South Africa. The TIFA creates a Trade and Investment Council, composed of representatives of both governments, which will meet regularly to discuss specific trade and investment matters, negotiate agreements if appropriate, and identify and work to remove impediments to trade and investment flows. While the Trade and Investment Council is a government-to-government body, the private sectors of both countries may also be consulted.

TIFAs provide a mechanism in which trade, investment, intellectual property, and other issues can be addressed promptly.

ANTICOMPETITIVE PRACTICES

Competition Policy

Oligopolies and monopolies prevail in certain South African industries because of weak competition laws, international isolation, and the policies of the apartheid era government. In May 1998, a new competition law, based on the Canadian model was passed to address this issue.

Transparency and Corruption

The issues of corruption and transparency receive a great deal of press attention and have been the focus of increased concentration at the highest levels of the SAG. Late last year, a conference was held in Parliament to discuss ways to battle corruption in the public sector and another such conference is scheduled for March 1999. The SAG also has a special unit, the "Heath Commission," headed by Judge William Heath, which has extraordinary powers to investigate official corruption and work towards recovering public money lost through these activities. The commission has had some significant successes. Both President Mandela and Deputy President Mbeki have made corruption a major focus of their speeches. The SAG has expressed interest in signing the OECD Anti-Bribery Convention. U.S. businesses have complained about lack of transparency in awarding some public tenders.

Southern African Customs Union

The Southern African Customs Union (SACU) was created in 1910 with South Africa, Botswana, Lesotho, and Swaziland as its members. Namibia joined in 1969. Because SACU predated the creation of the GATT in 1947, notification of the duty-free status of goods from Namibia, Botswana, Swaziland, and Lesotho continues to be permitted under a grandfather clause. South Africa is in the process of renegotiating the SACU agreement with its partners, but it is not clear when these discussions will be completed. In the meantime, the current trading regime between the SACU countries is expected to continue. Key issues in the negotiations include the revenue-sharing formula, time lags in distribution of revenue, management of the system, and the need for a dispute resolution mechanism. Imports from outside the SACU are subject to a common external tariff. The tariffs are determined by the Board of Tariffs and Trade (BTT) in South Africa and implemented throughout the SACU.

ELECTRONIC COMMERCE

South Africa has a vibrant and growing Internet industry and the country is now in the world's top twenty countries ranked by number of Internet sites. A U.S. telecommunications company ranks among one of the major industry operators in South Africa.

The South African Government intends to develop legislation on cyber laws such as digital signature and encryption that will facilitate the development and growth of electronic commerce. It has not indicated that such legislation will restrict or overregulate electronic commence.

SWITZERLAND

In 1998, the U.S. trade deficit with Switzerland was $1.4 billion, an increase of $1.3 billion from the U.S. trade surplus of $85 million in 1997. U.S. merchandise exports to Switzerland were $7.3 billion, an decrease of $1.1 billion (12.7 percent) from the level of U.S. exports to Switzerland in 1997. Switzerland was the United States' 19th largest export market in 1998. U.S. imports from Switzerland were $8.7 billion in 1998, an increase of $284 million (3.4 percent) from the level of imports in 1997. The stock of U.S. foreign direct investment (FDI) in Switzerland at the end of 1997 was $35.2 billion, an increase of 16.5 percent from the level a year earlier. U.S. FDI in Switzerland is concentrated largely in the financial, wholesesale, and manufacturing sectors.

IMPORT POLICIES

According to the organization for economic cooperation and development (OECD, Swiss farmers are one of the most highly protected producer groups in the world. Switzerland is self-sufficient in pork, dairy and other agricultural commodities but imports approximately $6 billion worth of agricultural products annually, accounting for over 40 percent of total food consumption. The U.S. share of the agricultural import market is about 5 percent, which makes the U.S. the sixth most important exporter of agricultural goods to Switzerland and the largest outside the EU.

Switzerland is a relatively difficult market for many U.S. products to enter because of the high tariffs on agricultural products and preferential tariff rates for other countries, such as members of the European union. It is not clear if these special tariff rates fully conform to world trade organization (WTO) rules, since numerous agricultural products are excluded from the
Arrangements. It is particularly difficult to export prepackaged food products because of the Swiss customs practice of charging tariffs on the gross weight of imports (since the weight of the package is included in the tariff).

Administration of agricultural tariff-rate quotas has also presented problems for U.S. exports, since Swiss regulations often allocate the quotas to importers that purchase domestic products. This requirement has increased the level of protection for domestic producers and in some cases, such as potato products, Has meant that it was not possible for U.S. exporters to ship under the tariff-rate quotas. Switzerland also applies tariff-rate quotas on imported wines.

U.S. industry estimates of increase in U.S. exports if the above impediments in the agriculture sector were removed: $25-100 million.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In general, Swiss standards and labeling requirements do not present any significant hardship for U.S. companies.

Genetically engineered food products from the U.S., such as genetically modified corn and soybeans, are subject to a relatively slow approval process and face strong opposition from Swiss consumer groups and retail organizations. In June 1998, Swiss voters defeated a referendum to ban biotechnology research and release of biotechnology products into the environment, in part due to concerns about the impact of this proposal on Medical research, but biotechnology products remain somewhat controversial.

Approval of biotechnology products has generally been slower than in the united states and European union, which has led to situations where products approved elsewhere were banned in Switzerland. Two shipments of corn gluten meal were seized by Swiss authorities in march 1998 due to allegations that they contained genetically engineered corn varieties not yet approved in Switzerland. The shipments were not allowed to enter Switzerland after lab tests indicating the presence of unapproved corn varieties. The uncertain status of such imports has led to lower imports of corn gluten meal and other products from the united states once approved, genetically engineered food products are subject to strict labeling requirements.

Swiss import regulations for many agricultural products is leads to some of the same problems in Switzerland that U.S. exports face in the EU. Certification of pet food continues to be a problem for U.S. exports. While the problem for pet food containing poultry was resolved in 1997, the problem with pet food containing beef has not yet been satisfactorily resolved.

GOVERNMENT PROCUREMENT

On the federal level, Switzerland is a signatory of the WTO government procurement agreement and fully complies with WTO rules concerning public procurement. On the cantonal and local levels, a law passed by the parliament in 1995 provides for nondiscriminatory access to public procurement. The united states and Switzerland reached agreement in 1996 on a text which expands the scope of public procurement access on a bilateral basis.

EXPORT SUBSIDIES

Switzerland's only subsidized exports are in the agricultural sector, where exports of dairy products (primarily cheese) and processed food products (chocolates, grain-based bakery products, etc.) benefit from state subsidies. Switzerland is gradually reducing export subsidies as required under world trade organization (WTO) rules. The Swiss government has negotiated, but not yet ratified, an agreement with the European union that neither country will subsidize dairy product exports to the other which will allow Switzerland to increase subsidized dairy exports to non-European destinations.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Switzerland has one of the best regimes in the world for the protection of intellectual property, and protection is afforded equally to foreign and domestic rights holders. Switzerland is a member of all major international intellectual property rights conventions and was an active supporter of a strong IPR text in the GATT Uruguay round negotiations. Enforcement is generally very good.

Since may of 1998 Switzerland has been in compliance with its obligation under trips to protect company test data required by national authorities in order to Obtain approval to market pharmaceuticals. The new regulation enacted by the Swiss intercantonal office for the control of medicines mandates a ten-year protection period for such data. Prior to this regulation taking effect, the lack of protection in this area negatively impacted one U.S. company. However, it is now very unlikely that any further problems will arise for U.S. pharmaceutical firms.

Industry sources estimate lost sales due to software piracy at $93 million in 1997 (out of a market value of $2 billion for software). Trade losses and denied opportunities for sales and investment in all other IPR sectors are minor in comparison.

SERVICES BARRIERS

Switzerland's services regime appears to be as open as any in Western Europe. The telecommunications market, for example, has for the most part been fully liberalized And U.S. firms have established a presence here. One U.S. firm (as part of an international consortium) recently won one of the three government licenses to provide cellular phone services.

In contrast to the EU with its broadcast directive, Switzerland does not set specific limitations on the amount of non-Swiss or non-European origin programming that can be broadcast or shown in theaters. The government reserves the right, however, to require that broadcasters or cinema companies use a certain minimal share of Swiss production "if deemed necessary to Maintain the diversity of supply".

INVESTMENT BARRIERS

The Swiss welcome foreign investment and accord it national treatment. Foreign investment is neither actively encouraged nor hampered by any significant barriers. The federal government adopts a relaxed attitude of benevolent non-interference towards foreign investment. It confines itself to creating and maintaining the general conditions that are favorable both to Swiss and foreign investors. Such factors include economic and political stability, a firmly established legal system, extensive and reliable infrastructure, and efficient capital markets.

ANTICOMPETITIVE PRACTICES

There has been a very high degree of cartellization in the Swiss economy. A new law came into force n July 1, 1996, which deals much more harshly with cartels and similar associations than did the previous law. While cartels will still be permitted under certain limited circumstances (as they are in many countries), it should now be much more difficult for companies to justify to the authorities their continuation. It is too early to judge, however, how quickly or extensively the cartel situation in Switzerland will change. The existence of cartels likely does hinder some U.S. exports to Switzerland.

ELECTRONIC COMMERCE

The proportion of Swiss using computers and the Internet is quite high and the government generally supports promoting the evolution of electronic commerce with a minimum of regulatory interference. At present there appear to be no electronic commerce-related trade barriers in Switzerland. A number of U.S. firms providing Internet access service are active in the Swiss market.

Switzerland appears to be following the EU lead with respect to the Internet privacy issues. Swiss law stipulates that "personal data are not allowed to pass to a foreign country if the right to privacy of the person concerned is seriously endangered, in particular because there is no data protection that provides an adequate level of privacy protection to the Swiss one."

TAIWAN

In 1998, the United States trade deficit with Taiwan reached $15.0 billion, up $2.7 billion from 1997. U.S. exports to Taiwan in 1998 were $18.2 billion, down 10.9 percent from the same period the previous year. Taiwan was the 7th largest export market for the United States in 1997. Corresponding U.S. imports from Taiwan were $33.1 billion, up 1.5 percent. The stock of U.S. foreign direct investment (FDI) in Taiwan in 1997 was $4.9 billion, an increase of 6.6 percent from 1996. U.S. FDI in Taiwan is concentrated largely in the manufacturing, banking, and wholesale sectors.

Overview

Market access in Taiwan was significantly improved when the United States and Taiwan reached agreement in February 1998 on the market access elements of Taiwan's WTO accession package . The agreement includes both immediate market access and phased-in commitments, and will provide substantially increased access for U.S. goods, services, and agricultural exports to Taiwan. For example, the agreement permits imports from the United States of previously-banned pork, chicken, and variety meat products. It also provides improved access to the automobile, telecom, government procurement, beer, spirits, and wine markets.

Despite progress in these and other areas, however, significant trade issues with Taiwan remain, as described in the following paragraphs.

IMPORT POLICIES

Tariffs

Many agricultural tariffs were cut as part of Taiwan's 1995 unilateral tariff reductions. U.S. exporters nevertheless consider that many of the tariff reductions were not deep enough to have real commercial effect, and that the present tariff structure on these items, as well as other agricultural tariffs, continue to be a significant barrier to exports. Some examples include: fresh fruits (40-50 percent tariff), processed vegetables, including vegetable juices (35-40 percent), and sunflower seeds and oil (11-15 percent). However, many of these tariffs will be lowered in the context of Taiwan's WTO accession.

In addition, United States agricultural exporters continue to report instances in which the customs authorities on Taiwan have reclassified import items to lines with higher tariffs, often after years of trade history. This practice is most prominent in agricultural commodities, such as mixed feed stuffs, tallow and grease, and intermediate ingredients. Such a practice negates some of Taiwan's tariff cuts.

In May, 1998, Taiwan began implementing tariff cuts on 1,130 items, many of specific interest to U.S. industry, such as buses, agricultural products, including fruits and vegetables, and camera film. Tariff reductions on 15 agricultural products, negotiated as part of the U.S.-Taiwan bilateral WTO agreement, took effect in July 1998. An additional 777 items are slated for tariff cuts shortly. Taiwan's current average nominal tariff rate is 8.3 percent; the trade-weighted rate is 3.2 percent.

Taiwan is a participant in the Information Technology Agreement (ITA). Under the ITA, Taiwan has agreed to phase out tariffs on information technology products. The first tranche of ITA-related cuts was implemented on a temporary basis on July 1, 1997 under administrative order. A second tranche of cuts went into effect on January 1, 1998. While the vast majority of tariffs on these products will be phased out by the year 2000, for some products reductions will not be completed until 2002. The administrative order will have to renewed annually until Taiwan enacts permanent reductions in connection with its accession to the WTO.

Licensing and Other Restrictions

Of some 10,200 import product categories in Taiwan, around 990 still require approval from relevant authorities, and another 278 require import permits from the Board of Foreign Trade or pro forma notarization by banks. 264 items are banned, and may not be imported without special permission from the Taiwan authorities. Included in this category are agricultural items that can only be imported pending the agricultural authorities' prior approval. This amounts to a de facto ban on imports of many of these products since import approval is normally not granted. Quarantine requirements, which are often overly stringent and not based on sound science, also block imports of certain plant and animal products. Items under de facto bans include chicken (fresh and frozen), certain cuts of pork, peanuts, and adzuki beans. Rice and rice products are considered to be exceptional items requiring approval from Taiwan's Provincial Food Bureau. Imports of animal offal (beef, pork, and poultry), sugar, and selected dairy products are banned. However, Taiwan has agreed to remove these bans upon accession to the WTO. Moreover, under the U.S.-Taiwan WTO market access agreement reached in February 1998, limited market access for U.S. chicken, pork, and variety meat products is provided under a system of annual quotas. However, subsequent to the implementation of these quotas, Taiwan authorities used reclassification in order to ban or limit importation of two pork products. As a result of product reclassification, frozen bacon imports are now banned, and some pork bone product imports are limited by quotas. Both of these products could be imported in unrestricted quantities prior to reclassification.

In addition to these restrictions on agricultural items, the Council of Agriculture also implements what amounts to a de facto ban on the importation of fishing boats (including sport fishing boats), which has frustrated the export efforts of several U.S. firms. Motorcycles with engines larger than 150cc likewise require a special permit and are thus effectively banned from importation. For some products where licenses are required, the importer may be required first to obtain the authorization of numerous agencies such as Taiwan's Department of Health (DOH) for medical equipment, the Board of Foreign Trade or the Provincial Department of Agriculture and Forestry for certain fertilizers, and the Department of Environmental Protection for waste and scrap copper, aluminum, lead, and zinc. Often these additional approvals and documentary requirements add to the administrative burdens of importing the products into Taiwan or make importation effectively impossible for small exporters without the appropriate connections with the relevant authorities. Local content requirements in the automobile and motorcycle industries will be lifted as part of Taiwan's WTO accession.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Industrial products (such as air-conditioning and refrigeration equipment) are required to undergo testing to verify energy efficiency and capacity before clearing customs. Recent efforts to enforce compliance of some imported products with Taiwan standards have resulted in long delays at customs for some U.S. products entering the market, as testing facilities are inadequate and testing procedures slow and inefficient.

The most prevalent restrictive standards and testing requirements exist for agricultural goods. Taiwan's lack of an internationally-based set of pesticide tolerance levels for imported fruits and vegetables sometimes impedes trade in these products. In addition, imported agricultural goods are routinely tested while domestic products are not as closely monitored or tested. Similarly, stringent chemical residue testing of imported food products, such as turkey, pork, and game meat, limits imports. Taiwan often fails to notify its trading partners of changes in sanitary and phytosanitary (SPS) import regulations, despite pledges to abide by international norms as embodied in the WTO Agreement on Application of SPS Measures. Standards on preservatives for soft drinks preclude the import of certain beverages.

Registration and approval procedures for imports of pharmaceuticals, medical devices, and cosmetics are both complex and time consuming, and have been the subject of long-standing complaints by United States firms. Foreign medical device manufacturers must re-register second or third generation versions of previously approved products, and the Taiwan Department of Health also requires the registration of individual products instead of entire product lines.

For all but new chemical entities, pharmaceutical companies are still not allowed to import drugs which are produced using multi-site sourcing. Moreover, pharmaceutical companies claim that clinical trial requirements in Taiwan for drugs that have been approved in other major markets add 2-3 years to the approval time. In 1998, however, Taiwan authorities began a two-year phase-out of clinical trials as part of the registration process for new drugs. This initiative, once fully implemented, will significantly reduce regulatory burdens on pharmaceutical firms.

Lastly, Department of Health authorities continue to require the submission of detailed plant master files (PMF) as part of the registration and approval process for new drugs. United States industry has called for submission of United States FDA Establishment Inspection Reports, ISO-13485 certificates, and free sales certificates as a means to satisfy the PMF requirement. This would bring the PMF compliance for new drugs into line with Taiwan's new PMF requirement for U.S.-made medical devices.

Other trade barriers facing U.S. pharmaceutical and medical device makers are detailed below under "Other Barriers."

In 1997, the Taiwan authorities promulgated new electromagnetic compatibility (EMC) standards for computer and other electronic goods. Bilateral discussions led to a grace period prior to implementation of the new rules, allowing affected U.S. firms to comply without a disruption of U.S. computer exports to Taiwan. In October, 1998, the U.S. and Taiwan initialled an agreement under which Taiwan and the United States will mutually recognize EMC testing and certification by accredited labs, subsequent to a two-year confidence-building period. Implementation awaits approval by Taiwan's Cabinet.

GOVERNMENT PROCUREMENT

Problems encountered by U.S. firms in performing contracts in Taiwan are serious and constitute significant trade barriers. Despite recent reforms, access to Taiwan's estimated $10 billion annual public construction market remains problematic. Municipal governments in particular have been notably arbitrary in dealing with foreign contractors. The most common pattern of difficulty consists of frequent and unreasonable change orders introduced during performance of the contract. Performance bonds are forfeited and contracts canceled when foreign construction companies are unwilling to accommodate substantially increased costs within the originally agreed payment. Lack of timely and effective arbitration procedures prevent satisfactory resolution of contract disputes. Some major international contractors will no longer undertake significant contracts in Taiwan.

U.S. industry has also been hindered in bidding on major projects by non-transparent procurement procedures, which include the use of invisible ceiling prices on bid tenders and unlimited potential damages and contingent liability requirements which are inconsistent with international practices. Other problems include: expensive bond requirements, short lead times on major tenders, non-transparent and lengthy warranty provisions, unclear payment schedules, and pre-qualification requirements which limit experience to similar projects in Taiwan and disqualify related overseas experience. Additional limitations include a requirement that foreign firms have a local construction license or else establish a local subsidiary in order to bid on public projects. Possible exceptions to current laws involve construction services requiring new technology or cases where foreign firms provide consulting and other services.

In connection with its accession to the WTO, Taiwan has agreed to join the Agreement on Government Procurement (GPA). Adherence to the GPA's procedures should improve the transparency of the bid process on major government procurement contracts. In addition, Taiwan has agreed to new dispute settlement procedures on major government contracts. A new Government Procurement Law was passed and promulgated in mid-1998, marking an important step towards open, fair competition in Taiwan's market for public procurement projects. The new law is being implemented and enforced by a reorganized body, the Government Procurement and Public Construction Commission.

EXPORT SUBSIDIES

Taiwan provides an array of direct and indirect subsidy programs to farmers, ranging from financial assistance to guaranteed purchase prices higher than world prices. It also provides incentives to industrial firms in export processing zones and to firms in designated "emerging industries." Some of these programs may have the effect of subsidizing exports. Taiwan is currently in the process of notifying the WTO of these programs, and as part of its WTO accession, it may be required to amend or abolish any subsidy programs deemed inconsistent with WTO principles.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Citing persistent enforcement problems, the United States put Taiwan back on the Special 301 Watchlist in August, 1998. Although Taiwan has enacted laws designed to improve intellectual property protection, enforcement of those laws remains problematic. The United States is particularly concerned about inadequate enforcement efforts in the face of continued production and export of counterfeit U.S. software and video games to the United States and third countries. In 1998, Taiwan was the second largest source of counterfeit goods seized by U.S. Customs.

A key problem in Taiwan's IPR enforcement is its weak judicial system. Taiwan judges are often inadequately trained in IPR issues, and, in the past, made a variety of questionable procedural decisions to avoid taking action on the merits in copyrights infringement cases.

U.S. software publishers are also harmed by the production and sale in Taiwan of "compilation" recordable CDs. These CDs, which buyers can have loaded with a selection of software off of a menu, can contain thousands of dollars of illegal software but cost only a few dollars. The U.S. software industry is attempting to work with Taiwan authorities to put in place enforcement programs to deal with this problem.

Owners of U.S. patents and trademarks have experienced difficulty in obtaining and enforcing rights in Taiwan. The general lack of transparency and predictability in the system for obtaining trademarks is a continuing problem. In addition, some U.S. patent and trademark owners are concerned that Taiwan authorities are either permitting or acquiescing in abuses of Taiwan's patent law which impede or prevent foreign right owners from enforcing their patent rights.

Another area of concern is the lack of adequate protection for the packaging, configuration, and outward appearance of products, an area of IPR known as “trade dress.” Despite provisions in Taiwan’s Fair Trade Law designed to protect unregistered marks and other packaging features, copying of U.S. products by local products which are misleading in appearance remains a problem. U.S. firms have made numerous complaints.

SERVICES BARRIERS

Financial Services

Inward/outward remittances unrelated to trade by individuals or companies are still subject to annual limits. New Taiwan Dollar (NTD) derivative contracts may not exceed one-third of a bank’s foreign exchange position. To stabilize the foreign exchange market in the wake of regional financial turmoil, Taiwan’s Central Bank of China closed the non-deliverable forward (NDF) market to domestic corporations in May 1998; the NDF market remains open to foreign companies.

In May 1997, the financial authorities announced that in principle insurance companies would be allowed to set some premium rates and policy clauses without prior approval from regulators. Insurance companies are still required to report such rates and clauses. In July 1995, Taiwan removed a prohibition against mutual insurance companies; as of late 1998, however, authorities had not issued implementing regulations.

Legal Services

Foreign lawyers may not operate legal practices in Taiwan, but may set up consulting firms or work with local law firms. Qualified foreign attorneys may, as consultants to Taiwan law firms, provide legal advice to their employers only. In preparation for its accession to the WTO, legislation was passed in May to clarify the status and scope of work for foreign-licensed attorneys, and also to permit the eventual establishment of foreign legal partnerships. However, last minute changes to the law failed to achieve this purpose, and call into question the legality of existing arrangements made between foreign and local attorneys. Taiwan authorities have pledged to remedy these inconsistencies and, for now, the new law, like many others linked to the accession process, is not being implemented.

Films

While restrictions have been eased recently, Taiwan continues to limit the importation and showing of foreign films. Only 50 film prints per title are allowed to be imported. The number of theaters in any municipality allowed to show the same foreign film simultaneously is limited to 18. Taiwan has pledged to abolish these restrictions upon accession to the WTO.

INVESTMENT BARRIERS

While Taiwan continues to liberalize its financial sector, limits remain on foreign ownership in listed companies. For qualified foreign institutional investors, restrictions on capital flows have been removed, although they are still subject to limits on portfolio investment. Foreign individual investors are subject to some limits on their portfolio investment and restrictions on their capital flows.

Taiwan continues to relax investment restrictions in a host of areas, but foreign investment remains prohibited in key industries such as agriculture, basic wire line telecommunications, broadcasting, and liquor and cigarette production. Wire line telecommunications will be gradually liberalized beginning in 1999, and will be completely liberalized by July 2001 under Taiwan's WTO accession commitments. Liquor and cigarette production will be fully liberalized by 2004. Foreign ownership in airlines is limited to 33 percent, but this ceiling may be raised to 50 percent under pending legislation.

ANTICOMPETITIVE PRACTICES

In the cable TV market, concerns are growing that the island's two dominant multi-system operators (MSOs) are colluding to inhibit fair competition. Control by the two MSOs of upstream program distribution is making it increasingly difficult for U.S. providers of popular channels to negotiate reasonable fees for their programs. Concerned Taiwan authorities are aware of collusive practices in the cable TV market, but have thus far taken only limited steps to address the problem.

ELECTRONIC COMMERCE

Taiwan supports international efforts to facilitate global e-commerce, and recently unveiled e-commerce policy guidelines which emphasize the primacy of the private sector in e-commerce development. In practice, however, Taiwan's approach to e-commerce and related issues is less clear. At the end of 1998, for example, central authorities had proposed an amendment to the Taiwan Telecom Law which could, depending upon implementation, require an intrusive and time-consuming inspection and approval system for all hardware and software encryption modules. U.S. industry opposes the amendment on the grounds that such a system is contrary to international norms. Moreover, in practice, such an inspection regime could adversely affect an estimated $30 million in annual computer software and hardware exports from the United States

OTHER BARRIERS

Market access for U.S.-made medical devices and pharmaceuticals has been one of the most contentious trade issues between the United States and Taiwan over the last two years. Taiwan has declared both the medical device and pharmaceutical sectors as areas warranting priority for development. Favorable measures have been introduced by Taiwan agencies to promote growth and technological development in these areas.

Taiwan does not discriminate against imported devices and drugs per se. However, Taiwan's national health insurance system acts effectively as the exclusive buyer for all medical products and services in Taiwan. As such, Taiwan authorities set prices for all drugs and medical devices on a de facto basis. It is this pricing system which frequently has the effect of discriminating against typically higher quality and higher priced pharmaceuticals and medical devices imported from the United States by limiting the reimbursement amount for certain products. Other regulatory barriers to medical device and drug imports are discussed in detail earlier in this report under "Standards, Testing, Labeling, and Certification".

Medical Devices: The Taiwan market has been an important one for the U.S. medical device industry. Taiwan is the third largest emerging market in Asia for U.S. medical device industry exports. Through the middle of the 1998, U.S. medical device industry exports to Taiwan were approximately $207 million, according the

Health Industry Manufacturers Association (HIMA). HIMA estimates the total market in medical technologies in Taiwan to be around $900 million. While U.S. device exports were growing by 11 percent through the middle of 1998, HIMA believes discriminatory practices now threaten about two-thirds of U.S. exports, as well as prospects for substantial growth. Future losses could be in the range of $100 million annually, according to HIMA.

In 1996, the United States and Taiwan concluded an agreement on medical device pricing with specific measures to be achieved regarding national treatment, transparency, openness, predictability, and functionality. Taiwan has thus far not taken adequate measures to establish differentiated pricing for devices based on the relative value to technology (the "functionality" measure). Significant differences exist between the functionality of imported products and those made in Taiwan.

In December 1997, Taiwan's National Health Insurance Bureau (NHIB) introduced a diagnostic-related group case payment system for medical device products. This system assigns "generic" pricing, counter to the principle of creating value-based pricing for devices as stated in the agreement. This unexpected change in reimbursement systems was accompanied by drastic price cuts for foreign manufactured orthopedic products to levels nearly identical to those for domestically produced orthopedic products, thus eliminating the distinction between products based on quality and relative value.

The change to generic rather than quality pricing for medical devices threatens to reduce dramatically the market for advanced foreign medical device products, at the same time that it provides ample profits to local Taiwan companies for development of more advanced medical devices. The United States is requesting that Taiwan adopt special measures that will recognize the value of the technology embodied in U.S. and other foreign medical devices -- especially in orthopedic knee and hip implants.

Pharmaceuticals: The U.S. pharmaceutical industry faces price controls similar to those encountered by U.S. medical device manufacturers. Under Taiwan's pricing system, producers of "generic" pharmaceuticals are reimbursed at a set percentage of the price set for the equivalent proprietary drugs. This system discriminates against patented and brand-name pharmaceuticals that are typically imported by providing a higher rate of return on "generic" products that are produced in Taiwan. Since Taiwan producers do not have to pay for research, development and testing (but are entitled to a high price), they can offer "unofficial" discounts on their products and thereby enjoy a significant price advantage over brand-name competitors when bidding on procurement contracts. Although Taiwan authorities have eliminated situations where generic drugs receive the same price as higher quality patented pharmaceuticals, U.S. companies remain concerned that in some cases, price differentials between generic and name brand products remain overly narrow.

During 1998, the Taiwan Department of Health promulgated a no-fault compensation scheme for patients who suffer from adverse drug reactions. While theoretically voluntary, the scheme has built-in incentives which would put non-participating companies at a competitive disadvantage in the marketplace. The scheme requires a contribution of 0.1% of sales revenue from participating firms. U.S. firms claim this duplicates existing expenses for product liability insurance.

TANZANIA

IMPORT POLICIES

Trade Barriers

All imports into Tanzania, unless exempted, are subject to payment of import duty and the VAT. Pre-inspection is required for all goods whose value exceeds $5,000 at the point of origin to determine value, quality, the payable duty, and tax. SGS, a Swiss international evaluation firm, is currently entrusted with this task. Effective January 1995, the customs duty and sales tax (VAT) bases were changed as follows: the customs base rose from 0, 10, 20 and 40 percent to 5, 25, 30 and 50 percent while the sales tax base of 0, 10, 20 and 30 percent was replaced by the new flat rate VAT base of 20 percent.

The customs department and the port authority remain a great hindrance to importers throughout Tanzania. Unpredictable and lengthy clearance delays and extra-legal levies are commonplace.

Import/Export Licenses

Trade liberalization measures introduced in the late 1980s and early 1990s abolished import and export licenses, except on goods deemed sensitive for health and security reasons. There are no export controls other than those for protected wild animals. Importation of contraband drugs and pornographic materials is prohibited.

GOVERNMENT PROCUREMENT

Government procurement regulations require that all purchases over $5000 be made through open tender. The Central Tender Board, based in the Ministry of Finance, is the organ responsible for administering this exercise. Tenders are frequently awarded to uncompetitive firms in which government officials have a significant interest. Some major government tenders, especially those involving medicines and military hardware, have been awarded in secret.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Tanzania is a signatory to only three World Intellectual Property Organization (WIPO) conventions. Patent and trademark protection is generally considered ineffective in Tanzania. Tanzania is a market for pirated recordings from third countries. Pirated video cassette recordings and television shows are common. Copyright proprietors have been unable to uphold their rights due to lack of properly defined property right laws and inadequate law enforcement. The Tanzanian Government has prepared an intellectual property rights bill to be tabled in Parliament in 1999. The new law is intended to provide Tanzania with a legal base for enforcement of intellectual property rights.

INVESTMENT BARRIERS

In the investment arena, the government continues to provide incentives to outside investors wishing to invest substantial amounts of capital in the country. In 1990, the government created the investment code and the institution for overseeing investment promotion, the Investment Promotion Center (IPC). In 1997, the code was updated and the Tanzania Investment Center (TIC) was established to replace the former IPC. Despite these reforms, the TIC still finds it difficult to carry out its duties effectively as a result of overlapping laws and regulations. On several occasions, TIC approvals have been rejected by other institutions within the government. The Tanzania Revenue Authority and Immigration Department have both rejected such approvals in the past.

OTHER BARRIERS

Privatization Program

Privatization of government-owned firms is progressing at a slow but steady pace. The Parastatal Sector Reform Commission, which was established in 1993, had listed about 400 parastatal corporations for privatization. The project was initially scheduled for five years, but by December 1998, only half of the targeted firms had been privatized. The procedure for privatization requires approvals from various government committees, including the cabinet, as a means to reduce individual influence on decision-making.

THAILAND

In 1998, the U.S. trade deficit with Thailand rose to 8.2 billion, up from$5.2 billion in 1997. U.S. merchandise exports to Thailand were $5.2 billion, a decrease of $2.1 billion from the level of exports in 1997. Thailand was the United States' 26th largest export market in 1998. U.S. merchandise imports from Thailand were $13.4 billion, up $839 million from 1997. The stock of U.S. foreign direct investment was $3.5 billion in 1997. Such investment was concentrated primarily in the manufacturing, petroleum, and wholesale sectors.

IMPORT POLICIES

Tariffs

During the 1998 Thai fiscal year (TFY) (from October 1997 to September 1998), the average applied tariff was 3.28 percent, compared with 5.5 percent in TFY 1997. The average trade weighted tariff for dutiable items was 10.37 percent, down from 15.2 percent in 1997. Tariffs accounted for 5.85 percent of government revenues during TFY 1998, compared to 11.9 percent in 1997. The sharp fall-off in revenue was a result of both lower tariffs and sharply lower levels of imports due to the economic crisis.

Overall, the Thai Government continues to reduce applied tariffs rates pursuant to a reduction schedule established in 1994, although progress was impeded during 1998 due to the economic crisis and shortfall in government revenues. In some areas, Thailand increased tariffs and excise taxes on a number of items. Tariffs on tobacco and clothing were raised from 30 to 60 percent. Woolen textiles, perfumes, cosmetics, and some leather products were raised from 10 to 40 percent. The tariff on crystal glassware rose from 30 to 35 percent. Tariffs on certain steel products were also raised by 2 to 5 percent. The Thai Government also applied an additional, temporary surcharge of 10 percent on all imports with a customs duty of 5 percent or greater. None of these tariff increases or surcharges appears to violate Thailand's WTO tariff binding commitments.

The structure of Thailand's tariff policy divides the Thai tariff schedule into a number of tariff rate categories or bands. The total number of categories has been reduced from 39 to 6, with the following rates: 0 percent for certain goods such as medical equipment and fertilizer; 1 percent for raw materials, electronic components, and vehicles for international transport; 5 percent for primary and capital goods, such as machinery, tools, and computers; 10 percent for intermediate goods; 20 percent for finished products; and 30 percent for goods "needing special protection," to include such items as fabrics, clothing, refrigerators, and air conditioners. Plans to reduce tariffs on petrochemicals and plastic products have been delayed due to the effects of the regional economic crisis, and sensitivity by domestic industry. However, these tariffs are being reduced gradually. For the period between June and December 1998, the petrochemical products tariff was reduced from 23.5 percent to 21.75 percent. Plastic pellets were reduced from 35.25 percent to 32.62 percent. In January 1999, the rates were reduced again to 20 percent for petrochemical products and 30 percent for plastic pellets.

Certain items are excluded from Thailand's tariff liberalization program. These items include automobiles and auto parts, alcoholic beverages, some agricultural products, and other sensitive products. During 1998, excise taxes were raised on gasoline (25 to 31 percent), beer (50 to 53 percent), and wine (50 to 55 percent). There is an excise tax of 50 percent on certain luxury items, such as yachts and wool carpets, and a 35 percent excise tax on distilled spirits (25 percent for brandy).

There are anomalies in the Thai tariff schedules. In some cases, import duties on unfinished materials have been higher than on finished products. Most of these problems should be addressed by Thailand's adoption of the tariff codes and nomenclature of the Harmonized Tariff System (HTS), a move currently being undertaking by the Thai Government.

Agriculture and Food Products

The main constraint to U.S. exports of most high-value fresh and processed foods are high import duties. With the exceptions of wine and spirits, there are no longer specific duties for most agricultural and food products, and ad valorem rates are slated to decline between 35 percent and 50 percent under WTO rules. Nevertheless, import duties are currently high (around 60 percent). Furthermore, duties on many high-value fresh and processed food products will remain high even after current rates are reduced between 33 percent and 50 percent in accordance with the WTO rules. Because most pre-WTO rates are around 60 percent, this will leave many items in the 30 percent to 40 percent range by the year 2004.

Thailand's tariff rate quota for a selected number of agricultural products was adjusted in 1996. Despite having a strong agricultural economy, the Thai government has lowered some agricultural product and food product tariffs beyond its WTO commitments. In October 1996, the quota for soybeans was eliminated and soybean meal was reduced, provided that specific domestic purchase requirements are met. In December 1997, these liberalized measures were reaffirmed for the coming year. Corn also enjoys liberalized tariff-rate measures, but the effects are severely limited. The Thai Government continues to require that corn imports arrive between February and June, and corn is also subject to a tariff-rate quota based on domestic wholesale corn prices. Rice is subject to safeguards on importation and price levels, pursuant to WTO rules.

U.S. industry says Thailand's 46-percent duty rates on pulses (e.g., dry peas, lentils, or chick peas) are so high they constitute a trade barrier. Thai snack producers and other food processing companies indicate that their imports of dry peas would increase by at least 20 to 25 percent if the duty rates were at a level commensurate with other Asian countries.

Phytosanitary standards continue to be a source of concern for the United States. IN 1995, the United States obtained the Thai Government's approval to import fresh citrus fruit from Florida and California. Since then, however, efforts to obtain approval for citrus from Texas and Arizona have been underway, but have stalled for unsubstantiated technical reasons.

Quantitative Restrictions and Import Licensing

Thailand is required to bring its import license procedures into conformity with its WTO obligations, but progress has been incremental. Import licenses are still required for 58 items, 23 of which are agricultural. Licenses are required for many raw materials, petroleum, industrial, textile, and agricultural items. All items of food for human consumption require licenses, however U.S. industry complains that registration requirements are unclear and non-transparent. In general, import licenses can sometimes be used to protect unproductive local industries and to encourage greater domestic production. Ten items which do not require licenses must nevertheless comply with the regulations of concerned agencies, offer extra fees, or provide certificates of origin.

Thailand

Customs Barriers

The Thai Customs Department enjoys an unusual degree of autonomy, and some of its practices appear to be arbitrary and irregular. The current economic crisis has added to the influence of this revenue-generating department, making some newly promulgated reforms difficult. Thai Customs is regarded as a major impediment to trade and investment by many business leaders. In a recent survey on transportation issues, Thai Customs was identified by more respondents as a barrier to doing business than any other problem. Among the problems frequently cited are excessive paperwork and formalities, lack of coordination between customs and other import regulating agencies, and lack of modern computerized processes. Also, many Thai and foreign importers complain of demands for unrecorded cash. Failure to pay these “facilitation fees” can result in prolonged clearance delays. Import regulations lack transparency, are complicated, have not been adequately notified to domestic and foreign importers/exporters, and are inconsistently applied.

The Customs Department may use the highest previously invoiced price of any product imported from any given country as a reference price for determining applicable duties. Thai customs officials often disregard actual invoiced values in favor of this check price to arrive at an assessment of value. This practice often results in overvaluation and fails to take into account differences in quality, as well as fluctuations in world prices of agricultural goods. Duties are sometimes arbitrary in other ways. For example, import duties on unfinished materials are higher than those on finished goods in some categories, which is a burden to foreign and domestic firms that manufacture or assemble in Thailand.

Despite the many problems, during 1998 considerable progress was made in reforming some areas of customs operations, such as express shipment handling, payment procedures, document simplification and broker licensing. In an effort to limit demands for facilitation fees and to maximize customs revenue, "walls of separation" have been introduced between customs personnel and brokers, and procedures introduced to check documentation upon filing for completeness and accuracy. Plans to introduce a paperless customs system (EDI) have met with only limited success. Computerized procedures are currently limited to express cargo and export shipments. Thai Customs justifies its continued reliance on original documentation, visual inspections, and average price formulas for customs valuations by pointing to chronic cheating on customs declarations by the Thai private sector.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Thai Food and Drug Administration (TFDA) requires standards, testing, labeling, and certification permits for the importation of all food and pharmaceutical products. This process can be a trade restriction due to the cost, length and complexity of the process, and occasional demands for disclosure of proprietary information. Foreign pharmaceutical companies have expressed concerns that the Thai Government’s core list of approved drugs can, in some circumstances, be used to limit market access for imported medicines. Also, in 1998, Thailand expanded its National List of Essential Drugs from the 250 compounds on the World Health Organization essential drug list (designed as a minimal list of drugs that should be available to satisfy basic health care needs in developing countries) to about 450 compounds, but applied a restrictive pricing scheme to limit reimbursement. U.S. pharmaceutical industry groups argue that this change effectively undermines legislation providing “pipeline” protection and market exclusivity for new products in Thailand and serves as a market access barrier to the introduction of new products.

Food licenses cost about $600 and must be renewed every three years. Pharmaceutical import licenses cost about $480 and must be renewed every year. The renewal fee is approximately 10,000 baht plus an additional service charge of 500 baht. Licensing fees of between $40 to $120 per item are usual for sample food products imported in bulk. Licensing fees for sealed, packaged foods cost about $200 per item. Pharmaceuticals must be registered for a fee of about $40 per item, and must be inspected and analyzed for another fee of about $40 per item. The process can take more than three months to complete. A controversial fee of 40,000 baht for fast-track testing service has been dropped.

Some TFDA procedures have been streamlined, but delays of up to a year can occur. Also, all processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description. American manufacturers are reluctant to disclose trade secrets, and some American products have not reached the Thai market for this reason.

GOVERNMENT PROCUREMENT

Thai Government policy currently requires a countertrade transaction on government procurement contracts valued at more than one billion baht (about $40 million), on a case by case basis. A counter purchase of Thai commodities valued at 20 to 50 percent of the principal contract may be required. As part of a countertrade deal, the Thai Government may also specify markets into which commodities may not be sold. Usually these are markets where Thai commodities already enjoy significant access. The countertrade requirement is a disadvantage to U.S. suppliers, and the provision for a case by case approach automatically creates a lack of transparency. A revision of Thailand's countertrade regulations is expected during 1999. The draft of a new law regarding government procurement was approved by the Cabinet in March 1998, but is delayed in the Council of State. The new law will provide for a lower countertrade threshold of 300 million baht, and the required counter-purchase of Thai commodities will be not less than 50 percent. Also, a law concerning corruption in government procurement has been approved.

EXPORT SUBSIDIES

Thailand maintains several programs that benefit manufactured products or processed agricultural products and may constitute export subsidies. These include subsidized credit on some government-to-government sales of Thai rice (agreed on a case-by-case basis), preferential financing for exporters in the form of packing credits, tax certificates for rebates of packing credits, and rebates of taxes and import duties for products intended for re-export. Thailand's Export-Import Bank has taken over administration of some of these programs, particularly packing credits, usually charging interest at LIBOR plus 3.0 to 3.5 percent.

As an incentive to stimulate export activity in reaction to the current economic climate in Thailand, the packing credit program expanded for the period between October 22, 1997 through September 18, 1998. The Thai Government has approved additional packing credit loans through commercial banks totaling $500 million, at LIBOR plus 3.0 percent to 3.5 percent. The Thai Export-Import Bank offers a 9.0 percent to 9.5 percent interest rate (LIBOR plus 1 percent), quoted in dollars, paid out in baht, and repaid in dollars.

LACK OF INTELLECTUAL PROPERTY RIGHTS PROTECTION

Since November 1994, Thailand has been on the U.S. Special 301 "Watch List." Despite the passage of significant IPR legislation, and a good working relationship between foreign business entities and the Thai Department of Intellectual Property, IPR piracy continues to be one of the leading trade issues between the United States and Thailand. The most significant problem is enforcement, as large quantities of illicit goods continue to be sold at the retail level. Allegations of irregularities continue to undermine confidence in the police.

During 1998, the U.S. and Thai Governments concluded an Action Plan intended to strengthen levels of IPR protection and enforcement within Thailand, and to focus Thai activities in those areas of priority concern to industry. The Action Plan sets forth a number of substantive elements for streamlining IPR regulatory procedures, enhancing cooperation between relevant Thai ministries and enforcement authorities, and other important reforms in the copyright, patent, trademark and general enforcement areas. The Thai Government's implementation of reforms prescribed by the Action Plan has been uneven; overall piracy rates continue to climb, and efforts by the interagency Joint Committee for the Suppression of Intellectual Property Infringement (JCSIPI) have not yielded satisfactory results. Despite the long-anticipated creation in December 1997 of the Thai Intellectual Property and International Trade Court, the Thai judiciary is reluctant to treat IPR violations as serious crimes and has not consistently imposed deterrent monetary penalties or jail sentences. U.S. copyright industries report an estimated trade loss of nearly $200 million from IPR infringement.

At the close of 1998, a ministerial-level review of progress in suppressing piracy was conducted and the Thai Government concluded that the problem of IPR piracy was outstripping available enforcement resources. Accordingly, a plan has been put into effect to borrow enforcement officials from local police units in order to increase the number and frequency of raids against retail vendors of pirated software, video, and sound recording goods. This enforcement strategy, together with a policy of greater communication and coordination among enforcement agencies, was put into effect in February of 1999. The U.S. Government continues to urge the Thai Government to also target the production of infringing works as a fundamental element of any enforcement strategy.

Patents

Thailand's Patent Law was amended by the Thai Parliament in October 1998 and the amended provisions will enter into effect in 1999. Pursuant to the U.S.-Thai IPR Action Plan, the amended law abolished the Pharmaceutical Review Board. According to initial observations, businesses in Thailand are generally pleased with the amendments. However, they foresee problems rising from new provisions regarding compulsory licensing authorizing the Director General of the Department of Intellectual Property to override a patent and issue a compulsory license if the patent is deemed as not being locally "worked"or if the price is deemed unreasonably high.

In September 1992, Thai legislation extended protection to pharmaceuticals and agricultural machinery, and increased patent protection to 20 years. In 1993, following complaints from private industry about inadequacies in the law, the Thai Government established administrative measures to provide a degree of market exclusivity for pharmaceutical products not eligible for protection under the 1992 law ("pipeline protection"), narrowed the scope of compulsory licensing provisions, and restricted the authority of the Pharmaceutical Review Board. These measures, however, are not fully consistent with the growing international consensus on protecting pharmaceutical products. The market exclusivity period, for example, is a maximum of just six years. The Thai Government has refused to exercise discretionary authority to amend pending patent applications under the 1979 law. Such action would provide enhanced protection under the 1992 patent law amendments and would protect not only pharmaceutical products, but also the production process.

Copyright

Thailand's copyright law became effective in March 1995, bringing Thailand into closer conformity with international standards under the WTO TRIPs Agreement and the Berne Convention. With active participation on the part of U.S. industry associations, the Thai police have conducted more piracy raids in 1998 than previous years. But the scale of the problem is growing, rather than shrinking. For computer software, especially, the piracy rate increased during 1998. One problem is that the copyright law contains certain ambiguities, particularly regarding decompilation and infringement of software, which continue to be areas of concern. Another deficiency is that the regulations for enforcement procedures leave loopholes that frustrate effective enforcement. Moreover, the judicial fines generally imposed for copyright piracy are too light to deter offenders.

Trademarks

Amendments to the Trademark Law in 1992 provide higher penalties for infringement and extend protection to services, certification, and collective marks. While these amendments seem to have created a viable legal framework and have led to some improvements in enforcement, trademark infringement, especially for clothing and accessories, remains a serious problem. U.S. companies with an established presence in Thailand and a record of sustained cooperation with Thai law enforcement officials have had some success in defending trademarks, but the process remains time-consuming and expensive. Pursuant to the IPR Action Plan, trademark application procedures in Thailand were streamlined in 1998. In addition to domestic pirated production, the United States continues to urge the Thai Government to address the export of infringing goods to overseas markets.

SERVICES BARRIERS

Telecommunications Services

Telecommunications services in Thailand are state-controlled, although the Government has allowed significant private sector participation since 1989. The Communications Authority of Thailand imposes equity- and revenue-sharing requirements on international value-added network service (IVANS) providers. The privatization of the two existing state-owned telephone companies was part of the telecommunications master plan, which was approved in late 1997.

In addition, the Thai Government's agreement with the IMF contains a commitment to accelerate the privatization of state holdings in the areas of energy, telecommunications, and transportation. As a first step, the two state telecommunication operators are expected to form strategic alliances with foreign operators, in preparation for liberalization of the sector which will be realized upon implementation of Thailand's obligations under the WTO Basic Telecommunications Services Agreement. Little progress was made on privatization in 1998.

Thailand's WTO basic telecommunications commitments cover only facilities-based services. Market access provisions become effective in 2006, although Thailand has yet to enact legislation to permit broader competition and implement pro-competitive regulatory reforms. Under WTO commitments, Thailand will permit foreign participation in this sector with a maximum of 20 percent equity.

Legal Services

The Alien Business Law prohibits foreign equity participation in a law firm exceeding 49 percent. However, under the U.S.-Thai Treaty of Amity, U.S. investments are exempted from the restriction on foreign equity participation in a law firm. Therefore, while U.S. investors may own law firms, U.S. citizens may not provide legal services in Thailand. The Thai Government admits only Thai citizens to the practice of law and, since 1973, has prohibited foreign lawyers (with the exception of "grand fathered" non-citizens) from providing litigation services.

Financial Services

Over the past several years the Government has gradually liberalized access by foreign firms to the Thai financial sector. However, significant restrictions on non-Thai participation in the sector remain. Since 1997, aliens have been allowed to engage in brokerage services. However, foreign firms are only allowed to own majority shares (greater than 49 percent) of Thai securities firms on a case-by-case basis.

During the WTO Financial Services Agreement negotiations, the Thai Government made significant commitments to liberalize the banking industry. Foreigners are permitted to own up to 100 percent of Thai banks and finance companies for a period of10 years; after which additional capital will have to be contributed by domestic investors. Foreign firms will be required to reduce their equity stakes toward 49 percent as new capital is added. In reaction to the regional economic crisis, the Thai Government is encouraging foreign banks to assist in the re-capitalization of Thai financial institutions by taking large equity positions in domestic firms.

Foreign banks are still disadvantaged in a number of ways, most notably are limits on branches. Foreign banks must maintain minimum capital funds of 125 million baht ($3.12 million at a January 1999 exchange rate) invested in government or state enterprise securities, or directly deposited in the Bank of Thailand. The number of expatriate management personnel is limited to six in full branches, and two in Bangkok International Banking Facility (BIBF), although the Thai authorities frequently grant exceptions on the basis of need.

INVESTMENT BARRIERS

Upon exchange of the instruments of ratification in December 1997, a new tax treaty between the United States and Thailand entered into force. Smaller American firms, in particular, had been disadvantaged by the lack of a reciprocal tax agreement between the two countries. The new treaty provides for the elimination of double taxation and gives American firms tax treatment equivalent to that enjoyed by Thailand's other tax treaty partners.

The Thai Cabinet has indicated it may rescind the current (1972) Alien Business Law, and enact a new and more liberal version during 1999. The existing law restricts aliens from holding a range of occupations in Thailand. The pending legislative proposal is expected to reduce these restrictions, and create two categories of restricted occupations. The first category of restricted sectors includes occupations that exploit Thai natural resources or are concerned with national security. The second category, which could restrict foreign business and investment, includes jobs in which Thailand feels it cannot compete with foreigners and therefore wishes to protect, such as farming, handicrafts, transportation, and construction. It is expected that the pending measure, when enacted, will define certain exceptions and allow foreigners to seek waivers from restricted sectors.

Trade-Related Investment Measures

Thailand has notified to the WTO certain measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The measures deal with local requirements in various sectors such as automobiles, engines and components, television picture tubes, milk/milk products, aluminum sheeting, and others. Proper notification allows developing-county WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. Thailand therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

ANTICOMPETITIVE PRACTICES

Several government firms are protected from foreign competition in Thailand. Also, allegations of impropriety in government procurement contracts and in activities administered by the Thai Customs Department are common. However, there has been some progress in the procurement area. The Thai Constitution, which was revised in October 1997, contains provisions addressing corruption within the government. The new Constitution also enhanced the status and powers of the Office of the Counter Corruption Commission (OCCC), and made this body independent from other branches of government. The members of the new Commission serve for a term of nine years, with no possibility of renewal, and report to their own chairman. Also, persons holding high political offices, and members of their immediate families, are now required to disclose their assets and liabilities before assuming and upon leaving office. Furthermore, a new law regulating the bidding process for government contracts both clarifies actionable anti-corruption offenses and increases penalties for violations.

ELECTRONIC COMMERCE

Thailand currently has no laws regulating electronic commerce.

TURKEY

In 1998, the U.S. trade surplus with Turkey rose to 967 million, down from $1.4 billion in 1997. U.S. merchandise exports to Turkey were $ 3.5 billion, a decrease of $27 mbillion from the level of exports in 1997. Turkey was the United States' 34th largest export market in 1998. U.S. merchandise imports from Turkey were $2.5 billion, up $427 million from 1997. The stock of U.S. foreign direct investment in Turkey was $1.1 billion in 1997. Such investment was concentrated primarily in the manufacturing, petroleum, and financial sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

The introduction of Turkey's customs union with the European Union in 1996 resulted in substantial revisions to Turkey's tariff regime. Turkey now applies the EU's common external customs tariff for third country (including U.S.) imports and imposes no duty on non-agricultural items from EU and European Free Trade Association (EFTA) countries. The weighted rate of protection for industrial products from the U.S. and other third countries dropped from 11 to 6 percent with the introduction of the customs union. Higher transitional protection for imports of sensitive goods (including automobiles, leather and ceramics) from third countries are being phased out over a five year period. A ten percent reduction in these duties in 1998 reduced the average rate of protection to 5.3 percent. By 2000, this rate is set to fall to 4 percent. Further reductions in the general tariff level are not likely to significantly affect U.S. exports.

The customs union has helped the EU consolidate its existing dominance in trade relations with Turkey. In 1997, the EU supplied 52 percent of Turkey's imports and received 50 percent of its exports. Bilateral trade with the United States increased 21.5 percent between 1995 and 1997, with exports growing 16.8 ($621 million) and imports 33.5 percent ($507 million). In the first ten months of 1998, the share of U.S. goods in total imports was 8.8 percent (Versus 9.0 percent in 1997), while EU exports accounted for 51.9 percent (versus 52 percent in 1997).

Turkey maintains high tariff protection on many agricultural and food products. Because of generous subsidies and high support prices far above world market levels, Turkey recently adopted high, although WTO-consistent, applied tariffs on grains and oilseeds to discourage imports and to encourage consumption of local crops. Since 1996, Turkey has raised its applied tariffs on milling wheat (from 3 to 55 percent), durum wheat (3 to 50 percent), corn (3 to 60 percent), sorghum (3 to 60 percent), barley (3 to 85 percent), and sunflower seed (3 to 29 percent). These tariffs have adversely affected U.S. exports to Turkey. Improved market access for U.S. bulk commodities would help the growth and modernization of the Turkish livestock and poultry sectors and would reduce inflationary pressures in Turkey's economy. For example, Turkish beef prices recorded the second highest increase among all sectors during 1998, forcing consumers to pay the world's highest beef prices. These high beef prices also support inflated prices for other meats, in particular, poultry.

The Turkish Government charges high import duties, plus additional domestic taxes and charges, on imported alcoholic beverages. The national drink (Raki) continues to dominate the market for hard alcohol, but market opportunities for U.S. wine and beer exports exist. Tariffs on these products are high, the import process is cumbersome, and U.S. companies have complained about the need to open letters of credit for imports through TEKEL, the alcoholic beverage monopoly.

Turkey also applies nontariff barriers to agricultural trade. From time to time, the Turkish Government has delayed issuance of grain and oilseed import permits, temporarily prohibiting imports. A more serious barrier is the long-standing livestock import ban. In August 1996, responding to an outbreak of foot and mouth disease (FMD), allegedly introduced by imported cattle, Turkey imposed a "temporary" ban on cattle and beef imports. Subsequently, the ban has been renewed every three months. Although there has been no instance of FMD in the United States for over 70 years, the Turkish Government has failed to fulfill its promise to lift its livestock import ban. On December 31, the government issued a decree setting up a livestock development program, under which qualified Turkish farmers will be allowed to import breeder cattle. The Turkish Government has yet to finalize the details of the program.

Eliminating high tariffs and nontariff barriers to agricultural trade could open up markets in Turkey worth between $100 and $500 million annually for U.S. grain exporters and over $ 50 million annually for U.S. livestock exporters.

Import Licenses

The Government of Turkey requires certification that quality standards are met for importation of human and veterinary drugs and certain foodstuffs. Import certificates are necessary for most products requiring after-sales services, including telecommunications and electronic equipment and vehicles. Importers are also required to establish repair facilities in all seven regions of Turkey. U.S. exporters are concerned about a decree issued on December 31 which appears to increase service obligations for auto and electronics importers. The government has indicated, however, that this decree will be rescinded.

GOVERNMENT PROCUREMENT

Turkey normally follows competitive bid procedures for domestic, international and multilateral development bank-assigned tenders. U.S. firms sometimes become frustrated over lengthy and complicated bidding/negotiating processes. Military procurement generally requires an offset provision in tender specifications when the estimated tender value exceeds one million dollars. Companies report that Turkey's offset program is one of the most expensive in the world. As military sales graduate from the foreign military sales/ financing program, more U.S. firms are likely to complain about Turkey's offset requirements.

A bilateral tax treaty between the United States and Turkey became effective in January 1998. U.S. bidders for Turkish Government service contracts will benefit thereby through an exemption from a 20 percent withholding tax.

EXPORT SUBSIDIES

Turkey's generous export subsidy programs were reduced in 1995 to meet commitments made to the EU and the WTO. The government still provides cash subsidies to a limited number of agricultural exporters. Domestic producers and exporters can take advantage of a number of state programs designed to support production for domestic and export markets, including cash and credit assistance for research and development projects, environmental projects, participation in trade fairs, market research and establishment of branch offices overseas. Exporters also benefit from export credit schemes and guarantees provided by the Turkish export-import bank.

Turkey

LACK OF INTELLECTUAL PROPERTY PROTECTION

In 1995, as part of Turkey's harmonization with the EU in advance of a customs union, the Turkish Parliament approved new patent, trademark, and copyright laws. Turkey also acceded to a number of multilateral intellectual property conventions. Although the new laws provide an improved legal framework for protecting intellectual property rights (IPR), they require further amendments to be consistent with the standards contained in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

Although Turkish police and courts are steadily gaining experience in enforcing these laws, increased enforcement is necessary in order to have a significant deterrent effect. The government has made efforts to educate businesses, consumers, judges, and prosecutors regarding the implications of the new laws. In 1995, as part of the Customs Union Agreement, the EU agreed to help Turkey set up IPR courts in 12 districts around the country to address education and workload difficulties in the judicial system.

Turkey has been on the Special 301 Priority Watch List since 1992. In the 1997 Special 301 review, USTR provided Turkey with a set of benchmarks necessary in order to improve its status in the 301 process. Out of the six benchmarks, Turkey has made progress on three. Taxes on the showing or foreign and domestic films have been equalized; the Prime Minister issued a circular to all government agencies to legalize the software used in their offices; and a public anti-piracy campaign was begun. Turkey also extended patent protection to pharmaceuticals in 1999. However, the copyright and patent laws are inconsistent with the WTO TRIPs Agreement, penalties for copyright piracy need to be increased, and effective enforcement actions must be taken to address widespread piracy. In April, 1998, the U.S. announced that it will not consider requests to augment Turkey's benefits under the U.S. generalized system of preferences until further progress is made on the benchmarks.

Copyright

The 1995 amendments to Turkey's 1951 copyright law extended the term of copyright protection from 20 to 70 years, protected computer software, increased fines, and abolished previous exemptions to full copyright protection. However, the amended law does not address all of the deficiencies in Turkey's copyright regime.

As a result of a public anti-piracy campaign by the government and Turkish artists and the introduction of banderoles, Turkish consumers are becoming more aware of how and why they should avoiding purchasing pirated works. However, new problem areas are developing, notably in pirated CD video games. Over the last year, the market has grown enormously, fueled by the availability of cheap pirate copies. Turkish police have made three seizures of counterfeit CD videos and staged several raids. In 1998, local importers formed the entertainment software protection alliance to protect their interests in Turkish courts. According to estimates from the International Intellectual Property Alliance (IIPA), U.S. copyright-based industries' losses in Turkey due to piracy were $224 million in 1998.

Patents

On January 1, 1999, Turkey extended patent protection to pharmaceuticals. U.S. officials and R&D-based pharmaceutical firms question whether the law is fully compatible with the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs). The law includes several questionable provisions, including the law's broad compulsory licensing provisions, ambiguity concerning whether importation satisfies working requirements, and overly restrictive conditions of patentability for biotechnology inventions. In December

1998, the Turkish patent office issued a regulation intended to clarify that importation constitutes working a patent.

There also is concern that Turkey does not adequately protect test data submitted to regulatory authorities to support applications for marketing approval of pharmaceutical and agricultural chemical products, as required by Article 39.3 of the TRIPs Agreement.

Trademarks

In 1995, Turkey enacted new trademark legislation and acceded to a number of international patent and trademark conventions. Companies report that government enforcement efforts have begun and are more effective in larger cities.

SERVICES BARRIERS

Accounting

Foreigners are not permitted to acquire, own an interest in, form a partnership with, merge with, establish, or affiliate with Turkish accounting firms. Owners, permit owners, and employees of accounting firms established in Turkey cannot acquire, own an interest in, form a partnership with, merge with, establish, or affiliate with foreign firms.

Names of foreign or affiliated firms cannot be used in the legal name of an auditing partnership or corporation, and cannot be used on letterheads and business cards.

Regulations prohibit the formation of partnerships among partners of different levels and titles. Also, qualified non-Turkish auditors are not permitted to practice on an equal basis as a qualified Turkish auditor because of non-recognition of foreign-country professional certification and foreign education, and because of nationality requirements.

Legal Services

The practice of Turkish law and membership of the bar is restricted to Turkish nationals. A person cannot provide legal advice on foreign or international law without being licensed in the practice of Turkish law. Turkish lawyers are not allowed to form partnerships with foreign lawyers.

Architecture and Engineering

The Turkish Government has discretionary authority to grant a percentage preference to domestic firms on public construction projects. Licensing of architects and engineers is limited to Turkish nationals.

Telecommunication Services

State-Owned Turk Telekom currently provides basic telecommunications services, with the exception of two GSM licenses, operated by Turkcell and Telsim, which provide cellular phone service. The Turkish Government is expected to make two further GSM licenses available in 1999. The Turkish Government plans to sell 20 percent of Turk Telekom's shares to a strategic investor in 1999 as part of its privatization drive. A further 15 percent is slated to be sold to current employees, and 14 percent to be placed on international stock markets.

In the WTO negotiations on basic telecommunications services, Turkey made commitments to provide market access and national treatment for all services at the end of 2006, with a 49% limit on foreign equity investment. In the interim, Turkey committed to provide national treatment for mobile, paging and private data networks. Turkish officials have prepared a draft law, which is pending, to accelerate the opening of the market for basic services to 2002. Turkey agreed in its WTO commitments to establish an independent regulatory authority and to make licensing criteria publicly available.

INVESTMENT BARRIERS

Turkey has a liberal investment regime in which foreign investments receive national treatment. The Treasury Under Secretariat screens foreign investment proposals, but this appears to be a routine and non-discriminatory process. Almost all areas open to the Turkish private sector are fully open to foreign participation, but establishments in the financial and petroleum sectors require special permission. The equity participation ratio of foreign shareholders is restricted to 20 percent in broadcasting and 49 percent in aviation, telecom services, and maritime transportation.

Foreign investment in the power sector has been slowed by concerns over the projects' legal classification as a "concession," which does not allow access to third party arbitration of commercial disputes under international conditions, a key requirement to obtain international financing. Investors also are concerned about the lack of clarity in the government approval process, lack of lender step-in rights, the lack of lender rights to termination, and disparities in lender and Turkish Government access to force majeure. The Turkish Government has attempted to resolve this through different means, including two laws. Numerous companies have proposed resolutions to the Turkish Government, including legislative and constitutional amendments. However, due to the short tenure of the current government before April general elections, passage by the parliament of any such amendments is unlikely at this time. The two build-operate-transfer (BOT) projects which began operation in January 1999 were only able to do so because they were "grandfathered" in after the constitutional court had ruled the BOT law was unconstitutional. Four of the five companies which won BO projects through a tendering process in 1997 have already signed their contracts and are in the process of putting together financing for their projects. However, the Center to Develop State Enterprises (KIGEM) filed a suit against the build operate law in December which could undermine the entire process. Therefore, the future of the BO projects remains uncertain.

Resolution of concerns in this area offers the single best prospect to increase U.S. trade and investment levels, dwarfing other sectors. The Turkish Government estimates that investments of $3 billion will be necessary each year for the next decade just to meet expected demand for power generation. U.S. Government officials work closely with concerned U.S. companies in order to resolve barriers to investment in this sector.

ANTICOMPETITIVE PRACTICES

As part of its customs union agreement with the EU, Turkey has pledged to adopt EU standards concerning competition and consumer protection. In 1997, a government "Competition Board" commenced operations, putting into force a 1994 competition law. Government monopolies in a number of areas, particularly alcohol and telecommunications services, have been scaled back in recent years, but remain a barrier to certain U.S. products and services.

ELECTRONIC COMMERCE

There are no specific barriers to electronic commerce in Turkey.

OTHER BARRIERS

U.S. companies often state that a significant barrier to increased trade and investment is the comparative lack of political stability in Turkey. With five governments in three years, and the resulting changes in senior government personnel, consensus has been difficult to form on important questions such as the scope and pace of privatization, reform, of social security and banking sector regulations, and how to provide for access to international arbitration for commercial disputes.

UKRAINE

In 1999, the U.S. trade deficit with Ukraine was $163 million, an increase of $154 million from 1997. U.S. merchandise exports to Ukraine were $368 million, a decrease of $37 million from the level of exports in 1997. Ukraine was the United States' 72nd largest export market in 1998. U.S. merchandise imports from Ukraine were $531 million, up $117 million from 1997.

Ukraine received USD 705.2 million in foreign investment for the first nine months of 1998 which is 40.6 percent more than for the same period in 1997. At the same time, investors withdrew USD 131.8 million in capital for the same period. Ukraine's total foreign investment as of October 1998 was USD 2.619 billion. The seven largest investing countries -- USA, Netherlands, Germany, Cyprus, Russia, Great Britain, and Korea -- accounted for USD 1.625 billion. The United States remains the largest investor in Ukraine, accounting for USD 481.3 million as of October 1998, or 18.4 percent of the total amount of foreign investment. U.S. investment in Ukraine is distributed in the following main economic industries: food - USD 73.9 million, domestic trade - USD 91.7 million, finance, credit, insurance, pension security - USD 25.9 million, machine building and metal processing - USD 39.2 million, communication - USD 29.6 million, agriculture - USD 22.5 million, non-ferrous metallurgy - USD 18.8 Million, flour-milling and mixed feed manufacturing - USD 18.2 million, chemical - USD 20.4 million, construction - USD 33.3 million, and other industries - USD 107.8 million.

As of December 1998, there were more than 300 U.S. companies operating in Ukraine.

Trade relations between the United States and Ukraine are governed by the U.S.-Ukraine trade agreement, which entered into force in1992. Under the terms of the bilateral agreement, both countries grant each other Most-Favored Nation (now referred to as "Normal Trade Relations") status. Ukraine is in the process of acceding to the World Trade Organization.

IMPORT POLICIES

The different import duties and taxes in Ukraine present a major obstacle to trade. For example, import duties range from 5 to 200 percent, excise taxes range from 10 to 300 percent, and VAT is 20 percent.

Ukraine has high protective tariffs on a number of products entering the Ukrainian market. In general, Ukraine has two kinds of tariff rates -- general or full-rate tariffs, and preferential or partial-rate tariffs. Preferential tariff rates vary according to the type of products imported. Imports from western countries are generally assessed preferential tariffs. Import duties largely depend on whether a similar item to that being imported is produced in Ukraine; if so, the rate may be higher.

U.S. exports to Ukraine receive preferential customs rates if the following three criteria are met: (1) the company is registered in the United States; (2) the goods have a certificate to prove U.S. origin; and (3) the goods are imported directly from the United States. There are no special registration or other requirements, according to the state customs committee.

Duties on goods imported for resale are subject to varying ad valorem rates. Imported goods are not considered legal imports until they have been processed through the port of entry and cleared by Ukrainian customs officials. Import licenses are required for few goods, primarily medicines, pesticides, and some industrial chemical products.

A list of goods subject to excise taxes includes alcohol (a December 11, 1998 law raised excise tariffs for imported alcoholic beverages from 5 to 7.5 ECU per liter, and lowered them for locally produced alcoholic beverages), tobacco (affected by the same law), cars, tires, jewelry, and other luxury items. Excise duty rates are expressed as a percentage of the declared customs value, plus customs duties and fees paid for importing products.

Ukraine's liquor tax system discriminates against imported products and provides protection for domestic producers. For example, under this system, all imported distilled spirits are taxed at a rate of three ECU per liter. However, brandy produced domestically is taxed at a rate of 0.25 ECU per liter. This preferential treatment is due to be eliminated by 2000.

A limited number of goods, including raw materials, component parts, equipment, machinery, and energy supplies imported by commercial enterprises for "production purposes and their own needs" are exempted from VAT. Many agricultural enterprises are also exempt from VAT.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Ukraine's regulatory environment is chaotic and its certification and licensing procedures are one of the most serious obstacles to trade, investment, and ongoing business. U.S. businesses identify the standards and certification problems affecting the consumer goods industry as: 1) lack of constant, clearly defined standards and regulations; 2) registration schemes unfeasible for mass trade; 3) lack of procedural flexibility; 4) complex and lengthy import license procedures; 5) overly complex and expensive certification requirements; 6) uneven enforcement of requirements; and 7) inordinately high certification and licensing tees.

The Ukrainian system of standardization, certification, and licensing of foreign goods, because of its unpredictable processes, lack of transparency, and overall complexity, has been a major hindrance to investment in Ukraine. Consumer goods and telecommunications equipment are two particularly problematic sectors. Many problems stem from the certification procedures, which are poorly defined and difficult to discover, and from regulations that are evolving constantly, often with little advance notice. For many imported products, the certification process involves multiple agencies and requires multiple certificates. Local, regional and municipal authorities frequently request additional documentation beyond that mandated by the central authorities.

Sanitary and phytosanitary measures are another area of concern. Ukraine applies a range of measures which are not based on science or supported by risk assessment, and which differ substantially from international standards. The certification and approval process is lengthy, duplicative, and expensive.

GOVERNMENT PROCUREMENT

Ukraine has as yet no central public procurement law with uniform standards, although it has a draft law on government procurement under consideration. Regulations are the responsibilities of individual ministries, and are often not followed in practice. Among the problems faced by foreign firms are a lack of public notice of tender rules, the failure to state tender requirements, covert preferences in tender awards, awards made subject to conditions that were not part of the original tender, and the lack of an effective avenue for firms to air grievances over contract awards or an effective means to resolve disputes.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Ukraine has implemented a set of intellectual property laws, including laws covering patents, industrial designs, trademarks, and plant varieties. In 1994 Ukraine adopted a copyright law, a broadcast law, and regulations requiring distribution certificates for films and videos.

Ukraine is a member of WIPO and has acceded to the Paris Convention for the Protection of Industrial Property, the Universal Copyright Convention, the Berne Convention, and the Convention for the Protection of New Varieties of Plants, and is a signatory to the trademark law treaty. Despite having acceded to the Berne Convention in October 1995, Ukraine refuses to protect U.S. works created prior to 1973. It also does not provide criminal penalties for copyright infringement, although a proposal to add such penalties has been made. The U.S.-Ukraine bilateral trade agreement and the U.S.-Ukraine bilateral investment treaty both obligate Ukraine to protect U.S. copyrights.

Enforcement of intellectual property laws remains sporadic and inadequate. Ukraine has reportedly become a major regional producer and exporter of illegal optical disks (CDs, DVDs and CD-ROMs). Border enforcement and other provisional remedies are inadequate. U.S. right-holders question the efficacy of pursuing administrative and judicial remedies. There continues to be rampant video piracy in shops and street kiosks. Pirate videos of MPAA member company films regularly appear in Ukrainian kiosks within weeks of their U.S. theatrical release. Most are back-to-back copies of videos recorded from U.S. cinema screens. Organized criminal groups are heavily involved in video piracy.

Broadcast piracy is also widespread. There are three national television stations, two of which are run by Ukrainian state television and which broadcast original Ukrainian programming and retransmitted Russian signals. There are also many regional channels that almost exclusively broadcast pirated films. Some of these stations use legitimate U.S. videos to make pirate broadcasts, often broadcasting the U.S. "FBI" Anti-piracy warning at the beginning of those videos. Industry estimates losses that due to copyright piracy in Ukraine exceeded $120 million in 1998.

INVESTMENT BARRIERS

An underdeveloped banking system, poor communications networks, a difficult tax and regulatory climate, increasing occurrences of crime and corruption, limited opportunities to participate in privatization, the absence of clear mechanisms to enforce intellectual property rights (thus creating a barrier to technology transfer to Ukraine), poorly defined and overly complex certification procedures, and a poorly-functioning and unstable legal system combine to create major obstacles to U.S. investment in Ukraine. In addition, the Government canceled previous privileges adopted for foreign investors (i.e., exemption from customs duties and VAT on imported products, and a five-year tax holiday), which further discouraged investors.

Foreign firms need to develop cautious and long-term strategies that take full account of the problematic commercial environment. Ukraine's burdensome and nontransparent tax structure remains a major hindrance to foreign investment and business development. Personal income and social security taxes remain very high. A presidential decree reduced combined payroll taxes from 48.5 percent to 37.5 percent effective January 1, 1999. The tax law was simplified this year, but there is not enough accumulated experience to assess the impact. At any rate, tax filing and collection procedures do not correspond to western countries. Import duties and excise taxes are often changed with little advance notice, giving foreign investors little time to adjust to new requirements. Foreign companies believe that the government seeks to fill its budget at their expense because they do not flee into the shadow economy. However, it is precisely the high rate of taxation, and its confiscatory nature, that has created the large shadow economy in Ukraine.

A council of independent experts, established by the President, has arbitrated in a number of disputes. Its rulings are not legally binding, but its decisions have generally been upheld. It is not a formal dispute mechanism, but the GOU would like to elevate it to such, for which it is seeking UNDP funding to make it more widely available to foreign investors.

To attract investments and remove obstacles to trade, Ukraine continued to create free economic zones (fez) in 1998 which would have a favorable regime for investors. Fez's were created in Kremenchuk and Donetsk oblasts, in the city of Slavutych, and in the Transcarpathia region. The government has also approved a fez for the Lugansk oblast.

UZBEKISTAN

In 1998, the U.S. trade deficit with Uzbekistan was $113 million, a decrease of $82 million from 1997. U.S. merchandise exports to Uzbekistan were $147 million, a decrease of $87 million from the level of exports in 1997. Uzbekistan was the United States' 99th largest export market in 1998. U.S. merchandise imports from Uzbekistan were $34 million, down $5 million from 1997.

IMPORT POLICIES

The GOU restricts imports by means of a system of import contract registration that severely limits the availability of foreign exchange. In 1996, the GOU was well on its way to creating a convertible currency. However, export revenue shortfalls caused by poor harvests that year inspired the GOU instead to tighten the earlier system of foreign exchange quotas. Since then, the GOU has periodically made the system yet more rigorous in response to continued pressure on foreign currency reserves have continued to dwindle. In 1998 the number of importers given convertibility quotas was cut by one third. The remaining two thirds saw their quotas slashed in half.

Although its primary use is now to lower the overall level of imports and thereby husband scarce foreign exchange, the import contract registration system was designed to enforce Uzbekistan's import substitution development strategy. The GOU uses the system to ensure that scarce foreign currency is used primarily to import capital rather than consumer goods. A recent formal survey of foreign companies concluded that currency restrictions are the worst of many serious obstacles to doing business in Uzbekistan.

Foreign companies or foreign joint ventures importing capital goods with their own funds held outside Uzbekistan are also subject de facto to the import registration system. Although a 1998 presidential decree exempts such cases from the registration requirement, foreign businesses report that their Uzbek bankers strongly recommend they register anyway.

Once over this hurdle, imports face the next -- the State Customs Committee. Customs clearance is a tedious and capricious bureaucratic process. Even capital equipment imports for U.S.-Uzbek joint ventures are subject to substantial processing delays and often remain in customs for two to three months. In one recent case an American investor waited for three months to process equipment worth four million dollars through customs and then was forced to pay 2,500 dollars in customs storage costs. Delays affect all imports as there is no procedure for releasing goods under bond.

At the end of 1998, the president announced that tariff and excise duty schedules would be revised in early 1999. Although Uzbekistan's tariff rates have not been extreme by international standards, its excise taxes form an effective barrier to legal imports of certain goods. The excise tax schedule discriminates against imports of goods subject to the tax. Imported liquor, for example, is subject to an excise tax of 90 percent, whereas the rate for domestically produced spirits ranges from 40 to 65 percent.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Uzbekistan does not accept international technical standards such as ISO 9000, preferring its own arbitrary set of standards. Despite regulations to the contrary, customs officials routinely reject foreign certifications of conformity to these standards. Perishable goods are subject to burdensome phytosanitary tests. Customs officials often take excess test samples of goods subject to technical standards for their own use.

There are three joint ventures that perform price verifications and otherwise assist in import contract registration. One of these, Intertek testing services, is also accredited to perform pre-shipment inspection (PSI) to verify the quality of contracted goods. Only tobacco and alcohol are currently subject to mandatory PSI, but importers may choose to contract PSI for other goods. A December 1997 decree requires the Ministry of Foreign Economic Relations to approve import contract registration of pre-inspected goods within two days. Since Intertek only received accreditation recently, this decree has not yet had an appreciable impact.

GOVERNMENT PROCUREMENT

GOU procurement practices are similar to those of many countries, with tenders, bid documents, bids and a formal contract award. Many tenders are announced with suspiciously short deadlines and are awarded to domestic firms with government connections. A draft government procurement law produced in mid-1998 by an inter-ministerial working group with support from a USG-provided advisor has not been submitted to parliament. The goal of this project is legislation conforming to WTO competitive bidding standards. The GOU has recently established a new agency with oversight over procurement practices by all levels of government.

EXPORT SUBSIDIES

The GOU grants some tax benefits, such as tax holidays for Uzbek or foreign joint venture exporters. To conserve foreign exchange the government has imposed a foreign currency surrender requirement on exporters. Exporters must each quarter surrender 50 percent (raised recently from 30 percent) of projected earnings of hard currency at the official exchange rate. Since the government and not the firm projects these earnings (on the basis of the previous year's receipts), the surrender quota could amount to more than 50 percent of real earnings if export volume or prices drop. Banks are required to convert all earnings as they come in each quarter until the government-determined quota is met. This feature deprives firms of access to their own supply of hard currency for lengthy periods. Finally, since the official exchange rate is roughly one third of the actual market rate, the conversion requirement means that exporters must increase prices to compensate. This amounts to a tax on exporters and hurts Uzbek competitiveness in world markets.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Uzbekistan’s intellectual property laws approach international standards. Because of poor enforcement, however, these laws have not yet made an appreciable dent in the wide availability of pirated material. Uzbekistan is a consumer, but not a producer of such material. The fact that the state-owned Uzbek airlines shows pirated U.S. films in flights to the U.S. and elsewhere is emblematic of the government's disregard for intellectual property rights. On the streets, pirated audio and video tapes and compact disks are sold freely. The Tashkent cable television company (a U.S.-GOU joint venture) routinely airs pirated films. Industry has not provided an estimate of losses due to piracy in Uzbekistan.

SERVICES BARRIERS

The largest barrier to foreign services firms entering the Uzbek market is difficulty in converting the currency. For example, insurance companies must collect their premiums in Uzbek currency and may not pay reinsurance premiums in hard currency on the world market. Likewise claims may only be paid in the unconvertible Uzbek currency. These provisions can only be overcome by a special presidential decree granting the company the right to do business in dollars. To date only a state-owned insurance company, Uzbekinvest, and an American-Uzbek joint venture, Uzaig, have that permission. Although the GOU has created an insurance supervisory board, there is not yet a system of licensing insurance companies. This means that firms can currently only operate in Uzbekistan on the basis of a GOU decree. Uzbek as well as foreign private insurance ventures face these currency and registration difficulties.

The law grants state-owned companies a monopoly over certain forms of mandatory state insurance (i.e. mandatory insurance paid for out of the state budget). The GOU also determines which companies are permitted to issue each of the thirteen types of mandatory non-state insurance, but in some instances, foreign firms are allowed to compete.

Apart from representative offices, foreign banks may not operate in Uzbekistan except as partners in joint ventures with Uzbek firms. Banking and insurance firms with foreign participation are required to establish a charter capitalization fund of USD five million, whereas the GOU determines the required size of the charter funds of Uzbek firms on a case-by-case basis.

INVESTMENT BARRIERS

Two new laws, "on foreign investment" and "on guarantees and measures designed to protect rights granted to foreign investors" came into effect in April 1998. To be considered "an enterprise with foreign investment" under the new laws, a firm must be at least 30 percent foreign- owned and have initial foreign equity of 150,000 USD. At present there is no legal means for smaller foreign-owned companies to register. Although the new rules reduced these capital requirements from a foreign equity minimum of 300,000 USD, they are still high enough to exclude foreign investment by small companies, which have proven to be engines of growth and job creation in other countries. The GOU has postponed consideration of proposals to ease these requirements further.

Uzbekistan's tax code introduced in 1997 is a great improvement over its predecessor. However, it misses a few important provisions that are part of the business environment in most countries. For example, it allows no credit for VAT on capital goods, including plant, machinery and buildings. This puts firms operating in Uzbekistan at a competitive disadvantage compared to those in countries that do allow such credits.

Two tax provisions tend to increase labor costs for foreign firms to raise salaries higher than those paid by local firms. First, the GOU places a 30 percent "import duty" on the salaries of expatriate staff. Second, Uzbek staff face a 45 percent income tax on salaries as low as 1,200 dollars a year. While most Uzbek companies do not comply with their tax duties, foreign investors generally feel obligated to adhere to the law.

While there are no specific local content laws affecting foreign investors, the tax system differentiates among firms based on the local content of their products.

ANTICOMPETITIVE PRACTICES

Business people in Uzbekistan note that if they are engaged in a sales or services sector in which either the GOU, or a GOU-controlled firm is a competitor, they face more than the usual amount of bureaucratic hurdles and currency conversion problems. A recent example concerns a U.S.- Uzbek joint venture's shipment of pure alcohol--to be used in making vodka. The shipment had already been admitted to the country when the GOU issued a new decree requiring special licenses for such imports. Customs officials seized the shipment, by then already awaiting processing, for lacking the import license ex post facto. Customs then sold half of the alcohol to the state-owned vodka producer. In subsequent legal proceedings, the courts ruled summarily in favor of the state company and the Customs Service.

OTHER BARRIERS

American investors unanimously complain that they do not control their corporate bank accounts in Uzbekistan. Every routine banking operation requires official permission. Businesses find that enormous amounts of senior staff time are consumed processing simple transactions. The GOU imposes ceilings on how much money can be withdrawn to pay salaries. All purchases must be made via bank transfers because the GOU uses the banks to do tax accounting. It is not possible to possess a corporate expense account or petty cash. Withdrawing money to pay for airplane tickets, for example, is tedious or impossible. Uzbek companies handle this problem with salary withdrawals for non- existent staff. Western accounting practices prevent American companies from using these deceptive practices.

Currency restrictions and the lack of access to computers make electronic commerce virtually impossible in Uzbekistan; bribery and corruption are endemic; and businesses complain that they lack access under Uzbek law to international arbitration. Moreover, the judiciary in Uzbekistan is not independent. In the event of disputes, courts frequently favor firms that are controlled or owned by the state.

VENEZUELA

U.S. bilateral trade with Venezuela totalled $15.8 billion in 1998. Venezuela was the United States' 22nd largest export market in 1998. U.S. merchandise exports to Venezuela totalled more than $6.5 billion, a decrease of $88 million (1.3 percent) from 1997. U.S. imports from Venezuela were approximately $9.3 billion in 1998, a decrease of $4.2 billion (31.0 percent) from 1997. This resulted in a U.S. trade deficit with Venezuela of $2.8 billion, a decrease of $4.1 billion from the $6.8 billion U.S. trade deficit in 1997. The decrease in Venezuelan exports to the United States and the consequent reduction in the U.S. trade deficit during 1998 can be attributed to the sharp fall in oil prices caused in part by the recession in Asia.

The stock of U.S. foreign direct investment (FDI) in Venezuela in 1998 was nearly $3.7 billion, an increase of 0.4 percent from the level of U.S. FDI in 1997. U.S. FDI in Venezuela is concentrated largely in the manufacturing and petroleum sectors.

IMPORT POLICIES

Tariffs

Venezuela has continued its efforts to conclude trade arrangements with other countries in Latin America and the Caribbean. Consequently, Venezuela extends preferential tariffs on a limited variety of products to member states of the Latin American Integration Association (ALADI). Venezuela signed a partial Free Trade Agreement with Chile in 1993. In 1997, the two countries agreed to expand the treaty's scope by eliminating the list of goods excluded from preferential treatment. Venezuela and Colombia have also concluded a Free Trade Agreement with Mexico (the "G-3" agreement), which entered into force on January 1, 1995. Under this agreement, most tariffs will be eliminated by 2004. Venezuela also has a preferential agreement with the Caribbean Common Market (CARICOM), under which CARICOM started to reduce tariffs on Venezuelan goods in 1998. Venezuela, jointly with Colombia, signed a framework agreement on free trade with several Central American countries in 1994, but has not yet negotiated schedules on tariff reduction and trade liberalization. Venezuela is also currently negotiating a free trade agreement with the Southern Common Market (MERCOSUR) in conjunction with other Andean Community members.

These preferential trade arrangements at the regional level put U.S. exports to Venezuela at a disadvantage. For instance, Venezuela imposes a 20 percent ad valorem duty on imports of U.S. beer, wines and distilled spirits, while some categories of wine from Argentina, Chile, and Mexico are subject to duties of only 4.0 and 5.6 percent, respectively. Under the G-3 Agreement, duties on almost all imported alcoholic beverages from Mexico will be reduced to zero by 2004.

The Andean Community tariff on soybeans and its byproducts is variable (set by a price band system), but it is usually 15 percent. Soybean oils from Paraguay, Argentina and Brazil are subject to lower duties of 1, 8, and 10 percent, respectively, as a result of trade preference agreements. Soybean meal from Paraguay is subject to a 3.75 percent tariff. Eliminating these preferences could increase U.S. exports by $5-10 million.

Similarly, Venezuela imposes a 15 percent duty on fresh and dried fruit from the United States. Under the Venezuela-Chile free trade agreement, all fresh fruit from Chile is subject to a 2 percent tariff, while most dried fruit enters duty free. Elimination of these preferences could increase U.S. exports by $5-10 million.

Nontariff Measures

Venezuela prohibits the importation of used cars, used tires, and used clothing. No other quantitative import restrictions exist for industrial products. Used or rebuilt automotive parts, for example, are not restricted, despite the ban on used cars.

Agricultural Import Licenses:

The Government has a ban in place against U.S. pork and swine because Porcine Reproductive and Respiratory Syndrome (PRRS) exists in the United States. This ban was lifted in April 1997 after the Ministry of Agriculture received evidence that PRRS is also present in Venezuela. Furthermore, the Venezuelan Agricultural Health Service (SASA) and Ministry of Health officials reviewed the USDA-regulated U.S. meat processing system and approved U.S. facilities for export to Venezuela. A final report is to be written and sent to the Agricultural Section of the U.S. Embassy. Nonetheless, Venezuela now plans to invoke its WTO-negotiated tariff rate quota (TRQ) for pork imports, again limiting market access below actual demand. Full details of this TRQ are unavailable at this time.

The Ministry of Agriculture implemented a yellow corn import licensing system in February 1997, ostensibly to administer its WTO tariff rate quota for sorghum and yellow corn, but in actuality to enforce domestic sorghum absorption requirements. Under this system, feed manufacturers must purchase a government-assigned amount of domestic sorghum at the official (i.e., higher than world market) price in order to obtain import licenses for yellow corn.

The Ministry of Agriculture imposed a ban on the import of onions, potatoes, and forage seeds from the United States in late 1998. The Ministry maintains a ban on the import of citrus products as well, citing the danger of disease.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In 1993, the Venezuelan Commission for Industrial Standards (COVENIN) began to apply obligatory domestic standards for commodities to certain imports. By the end of 1995, there were nearly 300 standards. Some Venezuelan importers of U.S. products have alleged that the Government of Venezuela applies these standards more strictly to imports than to domestic products. The certification process is expensive, increasing the cost of U.S. exports vis-à-vis domestic products. COVENIN requires certification from independent laboratories located in Venezuela.

GOVERNMENT PROCUREMENT

The 1990 law of tenders, its associated regulations, and a modifying decree of 1991, together establish three classifications for government procurement based principally on the value of the goods and services being procured: general tenders (more than $21,200), selective tenders ($2,120 to $21,200), and direct purchases (less than $2,120). For general and selective tenders, the law states that for offers that are within a "reasonable" range of each other for similar conditions, preference will be given to national tenders.

In the petroleum industry, the state oil company, PDVSA, is required to give preference to national materials and supplies. However, PDVSA can make foreign purchases if domestic firms cannot meet quantity, quality, or delivery requirements. In addition, imported materials supplied by local representatives of foreign manufacturers are classified as "domestic purchases." Venezuela is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Venezuela has reduced the number of export subsidies it provides, but retains a duty drawback system. Exporters can also get a rebate of the 16.5 percent wholesale tax paid on imported inputs.

Foreign as well as domestic companies are eligible for these drawback privileges. U.S. firms located in Venezuela complain of long delays in receiving rebates. Exporters of selected agricultural products -- coffee, cocoa, some fruits, and certain seafood products -- receive a tax credit equal to 10 percent of the export's f.o.b. value.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Venezuela does not yet provide adequate and effective protection of intellectual property rights (IPR). There is still widespread piracy of well-known trademarks, videos, satellite signals, and other protected works. Moreover, the Venezuelan court system has proven to be an unreliable venue for pursuing IPR claims, particularly those that date from before 1994 when Andean Community Decision 344 came into effect. As a result of its deficient laws and practices, Venezuela has been on the "Watch List" under the Special 301 Provision of the 1988 Trade Act since 1989.

The Government created a new Intellectual Property Office (SAPI) in March 1997, which became operational in May 1998 and made a promising start in fighting trademark piracy. Under SAPI, the Government expanded the mandate of a special anti-piracy police unit (COMANPI) to include the enforcement of patents and trademarks as well as copyrights. SAPI has recently extended protection to certain varieties of genetically engineered vegetables in accordance with Andean Decision 345. SAPI began work at the end of 1998 on establishing an arbitration center to allow trademark disputes to be resolved at the administrative level rather than pursuing them in the courts. SAPI is improving enforcement practices as well, although it retains a large backlog of cases and many U.S. companies remain tied up in the Venezuelan court system in efforts to recuperate their trademarks. Neither SAPI nor COMANPI appears to have sufficient resources to combat the extent of piracy in Venezuela.

Venezuela is a member of the Paris Convention for the protection of industrial property and the Berne Convention for the protection of literary and artistic works. Venezuela has ratified, but not yet fully implemented, the provisions of the WTO Agreement on Trade-related aspects of Intellectual Property Rights (TRIPs).

Patents and Trademarks

Andean Community Decisions 344 and 345 on the protection of patents and trademarks and of plant varieties have been in effect in Venezuela since January 1, 1994, and October 29, 1993, respectively.

The decisions are comprehensive and offer a significant improvement over previous standards of intellectual property protection provided by the Andean Community countries. However, these decisions remain deficient with respect to patents and trademarks. The deficiencies include overly broad compulsory licensing provisions, working requirements, restrictions on biotechnology inventions, denial of pharmaceutical patent protection for patented products listed on the World Health Organization's model list of essential drugs, lack of transitional ("pipeline") protection, and lack of protection against parallel imports. The decisions also do not contain provisions for enforcing intellectual property rights.

The fines provided in the 1955 industrial property law for patent and trademark infractions are minimal. They have not been increased to account for inflation and devaluation. The Government introduced legislation in early 1996 to update the entire law, but the bill is still awaiting action by Congress. Outstanding cases involving famous U.S. trademarks continue to be a problem, and marketing approval is being given to pharmaceutical products known to be patented.

Copyrights

Venezuela's 1993 copyright law and a 1995 implementing regulation substantially improved protection of copyright products and enhanced penalties for copyright infringement. An Andean Community decision on copyright protection, which complements Venezuela's domestic copyright law, has been in effect since 1994 and has established a generally effective and Berne-consistent system.

A national copyright office, established in October 1995, is responsible for controlling, overseeing, and ensuring compliance with the rights of authors and other copyright holders. It can issue opinions, serve as an arbitrator, and impose fines for copyright infringements. The government formed a special anti-piracy police unit (COMANPI) in July 1996 to act as the enforcement arm of the copyright office. COMANPI works closely with private sector representatives of the U.S. copyright industry, who provide the unit with intelligence information, financial backing and training. To further combat the problem of imported copies of legitimate products, a new customs bill, which became law in late 1998, gives authorities the right to seize pirated goods at the border.

COMANPI continued to improve the protection of encrypted satellite signals in 1998. Venezuela falls within the range of U.S. satellite television transmission, and unauthorized reception and distribution of U.S. signals has historically been widespread. During 1998, COMANPI seized 99 unauthorized decoders and 26 parabolic antennas, a significant increase from the previous year.

SERVICES BARRIERS

Venezuela maintains barriers in a number of service sectors. For example, all professions subject to national licensing legislation (e.g., engineers, architects, economists, business consultants, accountants, lawyers, doctors, veterinarians, and journalists) are reserved for those who meet Venezuelan certification requirements. Local insurers must insure imports receiving government-approved tariff reductions or government financing, or those that are government-owned.

Basic Telecommunications Services

In the WTO Negotiations on Basic Telecommunications Services, which were concluded in February 1997, Venezuela made commitments on all basic telecommunications services. It will provide market access and national treatment for these services as of November 27, 2000, when the monopoly granted to the privatized national telephone company (CANTV) ends. Venezuela adopted parts of the reference paper on regulatory commitments. Venezuela does not currently levy tariffs on electronic commerce or on Internet-related equipment. Regulations on Internet telephony are forthcoming.

Financial Services

In the WTO Negotiations on Financial Services, which were concluded in December 1997, Venezuela made commitments on banking, foreign exchange houses, capital markets, life insurance, reinsurance and brokerage. It will provide market access and national treatment for these services upon entry into force of the agreement. However, Venezuela did not make a commitment on pensions or on maritime, aviation and transportation insurance, and its offer includes an economic needs test and an MFN exemption.

INVESTMENT BARRIERS

The state continues to control key sectors of the economy, including oil, gas, petrochemicals, and much of the mining and aluminum industries. Despite continued state control in strategic sectors, Venezuela has an aggressive effort of privatization. In 1998, the government passed legislation allowing 49 percent of PEQUIVEN, the state petrochemical company, to be sold to private investors through domestic and international capital markets. In November 1998, the government also sold a 70 percent interest in the Nueva Esparta electric system and an 80 percent interest in the Venezuelan ferrosilicon producer FESILVEN to private investors.

Foreign investment continues to be restricted in the petroleum sector, with the exploration, production, refining, transportation, storage, and the foreign and domestic sales of hydrocarbons reserved to the Venezuelan Government and its entities (state oil company PDVSA) under the 1975 Hydrocarbons Law. However, private companies may engage in hydrocarbons-related activities through operating contracts or, when found to be in the public interest, through equity joint ventures as long as the joint ventures guarantee state control of the operation, are of limited duration, and have the prior authorization of Congress meeting in joint session.

The government passed legislation in 1998 aimed at introducing competition in the domestic gasoline market by domestic and foreign companies, allowing them to own and operate service stations, though the government retained the right to establish prices. By ministerial decree, Venezuela also introduced competition in the natural gas sector by allowing domestic and foreign private sector companies to process, store, transport, distribute and market methane and ethane.

Venezuela also limits foreign equity participation (except from other Andean Community countries) to 19.9 percent in enterprises engaged in television and radio broadcasting, Spanish language newspapers, and professional services whose practice is regulated by national laws. Foreign investors in the mining sector are subject to Venezuela's 1944 Mining Law and a complex set of executive decrees that require them to secure a concession from the government. Finally, in any enterprise with more than ten workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

Venezuela also maintains several other investment-distorting measures. Under the Andean Community Common Automotive Policy, Venezuela, Ecuador and Colombia impose regional content requirements in the automotive assembly industry in order to qualify for reduced duties on imports. The local content requirement for passenger cars was 32 percent in 1997 and has risen to 33 percent for 1998. Venezuela has notified to the WTO the local content requirements in the automotive sector, which are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet their obligations.

The government enforces a "one-for-one" policy that requires foreign musical performers giving concerts in Venezuela to share stage time with national entertainers. There is also an annual quota regarding the distribution and exhibition of Venezuelan films; a requirement that at least half of the television programming must be dedicated to national programs; and a requirement that at least half of the FM radio broadcasting from 7 a.m. to 10 p.m. be dedicated to Venezuelan music.

ZIMBABWE

In 1998, the U.S. trade deficit with Zimbabwe was $34 million, a decrease of $23 million from 1997. U.S. merchandise exports to Zimbabwe were $93 million, an increase of $11 million from the level of exports in 1997. Zimbabwe was the United States' 113th largest export market in 1998. U.S. merchandise imports from Zimbabwe were $127 million, down $12 million from 1997. U.S. foreign direct investment in Zimbabwe in 1997 was $129 million.

IMPORT POLICIES

Zimbabwe's economy, including its tariff regime, began a transition in 1991 from a highly controlled, Marxist-modeled, statist system to a more open, market-based economic system. During the first phase of its structural adjustment program, which ended in 1995, Zimbabwe abolished quantitative restrictions in favor of a tariff-based trading system. In early 1996, Zimbabwe undertook a comprehensive review and rationalization of its tariff policies and rates with substantial world bank input and the cooperation of the Confederation of Zimbabwe Industries (CZI). A new tariff regime, effective March 1, 1997, lowered duties on raw materials and other inputs, thereby removing in most cases the previous anomaly of higher duties on raw materials than on finished products. Raw materials now incur a duty rate of 5 to 15 percent, though additional import surcharges are also very likely to be applied.

In response to the significant slide of the Zimbabwe dollar against foreign currencies which began in August 1998, the Ministry of Finance announced on September 25, 1998, an increase in import tariffs ranging from 20 to 100 percent. Generally the higher duties are applied to luxury items and goods for which domestically produced substitutes exist. The list of targeted goods includes furniture, bicycles, motor vehicles, electrical and electronic goods, shoes, carpets and building materials.

Examples of the new tariffs and duties drawn from the customs and excise amendment notice Number 12 of 1998 include:

-- duty on edible vegetables increased from 40-60 percent to 60-80 percent;
-- these same rates apply to edible fruits, as well as coffee and tea;
-- duty on cereal flours was increased from 30 to 60 percent;
-- duty on prepared cereals was increased from 40 to 80 percent;
-- fruit juices and aerated water now attract 85 and 82.5 percent duty respectively, and Zimdollar $10/liter and 22.5 percent excise duty respectively;
-- imported wines attract 95 percent duty and $2.50/liter excise tax;
-- cigarettes are charged 100 percent duty and 80 percent excise;
-- perfume is charged 80 percent duty, up from 40 percent;
-- duty on footwear increased from 30 to 65 percent;
-- ceramic products are charged 80 percent duty, up from 40 percent;
-- pearls, precious and semi-precious stones are charged 70 percent duty, up from 15 percent;
-- air conditioning units previously at zero now attract 40 to 90 percent duty and a surcharge of Zimdollar $200/unit;
-- electric stoves are charged 90 percent duty, up from 40 percent;
-- duty on passenger motor vehicles (buses) seating 20 or more persons increased from 25 to 50 percent duty, while on vehicles seating 19 or less (minibuses) duty rose from 40 to 80 percent;

-- duty on toys went from 30 to 70 percent;
-- duty on plastic or wooden furniture increased to 80 percent from 40 percent.

Duties for what are considered luxury goods that can be manufactured locally have increased on average by 100 percent. A tariff commission has been formed to look at cases where local manufacturers have been disadvantaged by the new tariff regime, though it meets only monthly and has a large and growing backlog.

These tariffs are on top of a 15 percent import surcharge applied to all incoming goods regardless of classification, which became effective on October 2, 1998. A narrow exemption from the tax exists for capital goods, such as manufacturing equipment and intermediate goods subject to further processing and re-export.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Since independence, Zimbabwe has joined several international patent and trademark conventions. It is a member of the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property (Stockholm text), and the Bern Convention for the Protection of Literary and Artistic Works (Rome text). However, some enforcement problems exist. Audio and videocassette piracy is the most widespread intellectual property issue in Zimbabwe, though the volumes involved are relatively small. While software bootlegging undoubtedly occurs by users, pirated software is rarely sold commercially.

Investment Promotion

On the investment side, the government has abolished import licensing, and established the Zimbabwe Investment Center (ZIC) which will potentially increase U.S. firms' access to the Zimbabwe market. Export processing zones (EPZ) and certain related tax concessions could boost foreign investment, but a trade performance requirement requires eligible companies to export at least 80 percent of output. Other benefits include a five-year tax holiday, duty-free importation of raw materials, no tax liability from capital gains arising from the sale of property forming part of the investment in designated processing zones, and duty-free importation of capital equipment for use in the EPZ.

However, problems have and continue to arise from the Department of Customs, which charges designated companies duties on exempted inputs and equipment. The EPZ Authority, operational since early 1996, approved 19 projects by the end of 1997. However, the economic slowdown and high inflation and interest rates have slowed or halted movement on startup and completion. Investors are also encountering difficulties in connecting to telecommunication services and water and electric utilities. Exporters of manufactured products will be able to take advantage of new tax incentives included in the 1999 budget. Those companies exporting at least 40 percent of their output will receive an 8 percent tax break while new companies exporting at least 50 percent will receive a 10 percent break.

SERVICES BARRIERS

The ban on local foreign currency-denominated bank accounts is an impediment for businesses with imports or exports. World-class professional services (consultancy, accounting, legal and others) are generally available within the country. Securing temporary employment permits for nationals of other countries is difficult, time-consuming and at times arbitrary, although the Embassy has had some success in this area in responding to individual problems. Recently some software companies have encountered difficulties with the importation of programs containing extensive graphics, as Zimbabwe customs deems them to be entertainment programs (subject to an 80 percent duty) and not computer software (subject to a 15 percent duty). There are currently no trade restrictions on electronic commerce. Again, corruption and a lack of uniform application of the law by customs officials continue to plague importers and users of imported goods or components.

INVESTMENT BARRIERS

The government has lifted some of its most onerous restrictions on foreign investment. It permits pre-independence investors to remit 100 percent of declared dividends and no longer imposes restrictions on local borrowing. In September 1995, the Reserve Bank of Zimbabwe (RBZ) began liberalizing blocked accounts, allowing repatriation of certain blocked funds (profits and dividends accrued on pre-1993 investments, corporate funds in Government of Zimbabwe external bonds, and accounts with authorized dealers.) In response to an approximate 40 percent devaluation of its currency in late 1997, Zimbabwe banned foreign currency-denominated bank accounts in December of that year. The ban has made financial and cash flow operations more difficult for firms with sizable import or export components and increased their exposure to foreign exchange risk. Although in late 1998 the reserve bank announced that it was studying a limited reintroduction of foreign hard currency accounts, an announcement has yet to be made. In addition, because of Zimbabwe's 1998 financial crisis, there is serious concern that the government may resort to the reimposition of foreign exchange restrictions or a fixed rate regime to prop up the local currency.

Zimbabwe has signed investment agreements with the Overseas Private Investment Corporation (OPIC) and the World Bank. Notwithstanding such commitments, Zimbabwe has yet to embrace the concept of national treatment or discontinue its sizable "reserved list" of sectors that are closed to all but domestic investors or foreign investors in joint ventures with local partners. Other problem areas remain. U.S. firms and various national governments, including those of the United States, Japan, Great Britain, France, Belgium, and Italy, have voiced strong complaints about the lack of transparency and fairness in the government’s tender process. Recently, multilateral institutions have also criticized the government tendering process and called for changes.

In one example, the government not only disregarded established tender procedures in the proposed privatization of the Hwange power generation facility, but also dismissed the responsible board for criticizing its unilateral decision and lack of transparency. Similar criticism about the lack of fairness in dealing with various energy and telecommunications tenders highlights the adverse impact these procurement procedures have on foreign investment. In another instance, when the U.S. and German Embassies protested the lack of transparency in a cellular tender award, the government canceled the award and reissued the tender, later won by a German company and U. S. subcontractor.

Another roadblock to foreign investment is chronic delay and a lack of transparency by the government in approving work permits for expatriate representatives of U.S. firms. In one example, a senior executive in a major U.S. corporation was denied renewal of his work permit purportedly on the basis of his age (63). However, the U.S. embassy has recently had some success in obtaining favorable results on work permit issues. Delay and lack of transparency are often also encountered in Reserve Bank of Zimbabwe approval of investments in both new and existing operations. In addition, corruption is a growing problem with little being done to address it.

With respect to land reform: the redistribution of large commercial farms to the landless and small-scale black farmers has long been a stated goal of the Zimbabwean Government, although little progress has been made in achieving it. However, during late 1997 and in 1998, president Mugabe has repeatedly used increasingly harsh rhetoric that some 1,461 commercial farms will be seized imminently and without compensation for redistribution.

The president's pubic declaration of a "settle now, pay later" policy flies in the face of agreements made with the international donor community at the September 1998 land reform conference in Harare.

Expropriation of land without immediate and fiari competiton would have a crippling effect on local and foreign investor confidence, and would seriously disrupt Zimbabwe's large and economically significant agricultural sector. In statements that reflect a troubling lack of consensus within government, senior ministers have adopted a decidedly more conciliatory tone than President Mugabe, stating publicly that the resettlement process will proceed in accordance with agreements made at the land donors' conference. To date, the government has made little progress on resettlement.

OTHER BARRIERS

Privatization

The Government of Zimbabwe has not had a well-defined privatization program, largely due to the absence of a single organizational entity with overall responsibility for the design and implementation of the program. However, the government has now approved the creation of an independent unit based in the President's office and charged with identifying the public enterprises to be privatized and expediting the process. A key stated goal of the is to increase black ownership of economic assets, via its privatization/indigenization program. The National Investment Trust (NIT) was set up to facilitate the participation of the economically deprived indigenous population in the privatization process, though funds budgeted for this purpose have never made it to the NIT. As an ad hoc solution, the government has forced the postal workers and national social security fund to warehouse shares on the NIT's behalf.

Zimbabwe's commitment to its stated privatization/indigenization policies has been called into question on several occasions. Critics assert that the implementation of these policies has been slow, uneven, and has tended to favor government friends and ruling party allies at the expense of independent black entrepreneurs. U.S. firms have also complained of official attempts to dictate their choice of local partners (a local partner is required in many reserved sectors) under the guise of indigenization enforcement.

As part of the ongoing commercialization/privatization program, all parastatals must now pay taxes and declare dividends. Zimbabwe has privatized several of its agricultural marketing boards. The cotton company of Zimbabwe (COTTO, formerly the cotton marketing board), and Dairibord Zimbabwe (DZL, formerly the Dairy Marketing Board) were partially privatized in 1997 through share flotations. The Zimbabwe Government has retained 25 percent of COTTO and 40 percent of Dairibord. The donor community and the multilateral financial institutions agree that Zimbabwe's record on privatization has been poor. Sustained pressure by these outside groups has brought few results. The IMF has made progress on privatization a condition for disbursal of additional tranches of its standby credit facility, but continued delays are expected.

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